Subject Matter Code: E-01 Cost Analysis

Comment ID: CTR-040-020
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES M Re-Open Comment Period

Comment: THE RULE SHOULD BE RE-PROPOSED

The above concerns are fundamental and the recommended modifications necessary to comply with applicable laws and regulations are substantial. For these reasons, we recommend that EPA modify the Rule to account for these and other comments and then re-propose the Rule.

Response to: CTR-040-020

For analysis of the final CTR, EPA updated its Economic Analysis to reflect the most recent data and information for each sample facility and also increased the sample size for minor facilities. Based on this revised analysis, EPA estimated that minor POTWs will incur costs of approximately $5,000 per facility per year under the low cost scenario and $7,800 per facility per year under the high cost scenario. See also response to CTR-058-018.

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-040-022
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: Overall Conclusions

When EPA concludes that the costs and benefits of the CTR are of similar magnitude, EPA is comparing apples with oranges.

* The costs are based on the estimated costs of point source controls, which would be required as a

result of the CTR.

* The benefits are based on the assumption that nonpoint source controls, which would not be required as a result of the CTR, will be implemented (nonpoint sources are not regulated under the Clean Water Act).

The Economic Analysis is based on procedures and assumptions that greatly understate costs and benefits.

Based on estimates prepared by municipal wastewater and stormwater organizations, the costs of the CTR could be as high as $8 billion annually, almost two orders of magnitude greater than the high-end costs estimated by EPA ($85 million annually).

Based on case study analyses of benefits by municipal wastewater and stormwater organizations, the benefits of the CTR could be immeasurable and possibly even negative (For example, the CTR could force the removal of treated wastewater and stormwater from effluent dependent waters and thereby destroy the aquatic and riparian habitat created by the discharges). In large part, the absence of benefits is due to the fact (which EPA acknowledges in its analysis) that point sources are minor sources of toxic pollutants, and the fact that the major sources (i.e., the nonpoint sources) are not regulated under the Clean Water Act or the CTR.

EPA inappropriately compares costs for reducing pollutants that would be reduced as a result of the CTR (e.g., metals) with the benefits derived from the reduction of pollutants that will not be controlled as a result of the CTR (e.g., DDT).

EPA should prepare a new economic analysis using the following approach:

* Compare costs for point sources controls with benefits that will result from implementation of those controls using representative case studies.

* Compare costs and benefits on a pollutant-by-pollutant basis.

Response to: CTR-040-022

See responses to CTR-041-018, CTR-054-013a, CTR-040-042, CTR-035-057, CTR-056-018, CTR-021-008, and CTR-021-006b.

Comment ID: CTR-040-023
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: Review of EPA's Analysis of Potential Costs

EPA incorrectly asserts that the water quality criteria in the CTR will not directly impose economic impacts. In fact, the CWA requires that NPDES permits contain effluent limits necessary to achieve water quality criteria, and EPA regulations and guidelines (as well as the CTR) specify the methods that must be used to calculate effluent limits. Although the State has some flexibility, the flexibility is limited. The CTR will impose impacts.

Response to: CTR-040-023

See responses to CTR-009-008a, CTR-021-005c, and CTR-056-018.

Comment ID: CTR-041-018
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Overall Conclusions

When EPA concludes that the costs and benefits of the CTR are of similar magnitude, EPA is comparing apples with oranges.

* The costs are based on the estimated costs of point source controls, which would be required as a result of the CTR.

* The benefits are based on the assumption that nonpoint source controls, which would not be required as a result of the CTR will be implemented (nonpoint sources are not regulated under the Clean Water Act).

The Economic Analysis is based on procedures and assumptions that greatly understate costs and overstate benefits.

Based on estimates prepared by municipal wastewater and stormwater organizations, the costs of the CTR could be as high as $8 billion annually, almost two orders of magnitude greater than the high-end costs estimated by EPA ($85 million annually).

Based on case study analyses of benefits by municipal wastewater and stormwater organization, the benefits of the CTR could be immeasurable and possibly even negative (For example, the CTR could force the removal of treated wastewater and stormwater from effluent dependent waters and thereby destroy the aquatic and riparian habitat created by the discharges). In large part, the absence of benefits is due to the fact (which EPA acknowledges in its analysis) that point sources are minor sources of toxic pollutants, and the fact that the major sources (i.e., the nonpoint sources) are not regulated under the

Clean Water Act or the CTR.

EPA inappropriately compares costs for reducing pollutants that would be reduced as a result of the CTR (e.g., metals) with the benefits derived from the reduction of pollutants that will not be controlled as a result of the CTR (e.g., DDT).

EPA should prepare a new economic analysis using the following approach:

* Compare costs for point sources controls with benefits that will result from implementation of those controls using representative case studies.

* Compare costs and benefits on a pollutant-by-pollutant basis.

Response to: CTR-041-018

See responses to CTR-054-013a, CTR-040-042, CTR-035-057, CTR-056-018, and CTR-021-008.

Although the standards established by the CTR apply to all sources, EPA's analysis examined only the portion of benefits expected to be achieved by controlling point sources. EPA estimated the point source share of benefits based on data and information on the relative contribution of all sources to toxic loadings in California waters. Although point sources may account for only a small portion of the load in some waters, they may account for relatively larger portions at some sites, and point source controls will contribute to meeting standards in the water bodies.

Comment ID: CTR-041-019
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Review of EPA's Analysis of Potential Costs

EPA incorrectly asserts that the water quality criteria in the CTR will not directly impose economic impacts. In fact, the CWA requires that NPDES permits contain effluent limits necessary to achieve water quality criteria, and EPA regulations and guidelines (as well as the CTR) specify the methods that must be used to calculate effluent limits. Although the State has some flexibility, the flexibility is limited. The CTR will impose impacts.

Response to: CTR-041-019

See responses to CTR-009-008a, CTR-021-005c, CTR-056-018, and the preamble to the final rule.

Comment ID: CTR-044-013
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Overall Conclusions

When EPA concludes that the costs and benefits of the CTR are of similar magnitude, EPA is comparing apples with oranges.

* The costs are based on the estimated costs of point source controls, which would be required as a result of the CTR.

* The benefits are based on the assumption that nonpoint source controls, which would not be required as a result of the CTR will be implemented (nonpoint sources are not regulated under the Clean Water Act).

The Economic Analysis is based an procedures and assumptions that greatly understate costs and overstate benefits.

Based on estimates prepared by municipal wastewater and stormwater organizations, the costs of the CTR could be as high as $8 billion annually, almost two orders of magnitude greater than the high-end costs estimated by EPA ($85 million annually).

Based on case study analyses of benefits by municipal wastewater and stormwater organization, the benefits of the CTR could be immeasurable and possibly even negative (For example, the CTR could force the removal of treated wastewater and stormwater from effluent dependent waters and thereby destroy the aquatic and riparian habitat created by the discharges). In large part, the absence of benefits is due to the fact (which EPA acknowledges in its analysis) that point sources are minor sources of toxic pollutants, and the fact that the major sources (i.e., the nonpoint sources) are not regulated under the Clean Water Act or the CTR.

EPA inappropriately compares costs for reducing pollutants that would be reduced as a result of the CTR (e.g., metals) with the benefits derived from the reduction of pollutants that will not be controlled as a result of the CTR (e.g., DDT).

EPA should prepare a new economic analysis using the following approach:

* Compare costs for point sources controls with benefits that will result from implementation of those controls using representative case studies.

* Compare costs and benefits on a pollutant-by-pollutant basis.

Response to: CTR-044-013

See responses to CTR-041-018, CTR-054-013a, CTR-040-042, CTR-035-057, CTR-056-018, CTR-021-008, and CTR-021-006b.

Comment ID: CTR-044-014
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Review of EPA's Analysis of Potential Costs

EPA incorrectly asserts that the water quality criteria in the CTR will not directly impose economic impacts. In fact, the CWA requires that NPDES permits contain effluent limits necessary to achieve water quality criteria, and EPA regulations and guidelines (as well as the CTR) specify the methods that must be used to calculate effluent limits. Although the State has some flexibility, the flexibility is limited. The CTR will impose impacts.

Response to: CTR-044-014

See responses to CTR-009-008a, CTR-021-005c, and CTR-056-018.

Comment ID: CTR-047-001
Comment Author: City of Santa Fe Springs
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-047 incorporates by reference letters CTR-013 and CTR-027.
Attachments? N
CROSS REFERENCES

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our storm water program:

1 . The application of water quality standards to calculate water quality-based effluent limits for NPDES permits for municipal storm water discharges. As proposed by the USEPA, the numeric water quality standards in the California Toxics Rule will be used to calculate water quality-based effluent limitations for all NPDES permits issued by the State. We believe that this position is inconsistent with the plain

language used by Congress in incorporating the "maximum extent practicable" standard for municipal separate storm sewers systems (MS4s) into section 410(p) (3) (B) of the Clean Water Act. We recommend that the USEPA modify the Preamble to clarify that MS4s are not required to comply with water quality standards.

Response to: CTR-047-001

EPA's criteria for priority toxic pollutants were developed to protect beneficial designated uses. The criteria are independent of considerations about different categories of dischargers. In implementing water quality standards, the State has some degree of flexibility in establishing NPDES permit requirements or best management practices that would be appropriate for small municipal separate storm sewer systems.

Comment ID: CTR-052-003b
Comment Author: East Bay Dischargers Authority
Document Type: Sewer Authority
State of Origin: SC
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES C-13
E-02

Comment: However, the Authority is greatly disappointed that EPA chose not to follow the consensus recommendations for many of the most significant issues, including the methodology used for the EA and the choice of using the most conservative carcinogenicity factor for organic pollutants.

Response to: CTR-052-003b

While EPA agrees that the methodology recommended by the State Task Force on Economic Considerations may be one adequate method for the State to calculate the costs and benefits of State adoption and implementation of water quality standards, EPA did not use this method for its own Economic Analysis (EA) for the following reasons:

* EPA's primary responsibility in developing the EA is that it meets the requirements of Executive Order 12866. For program consistency, EPA chose to model the methodology of the EA after the Regulatory Impact Analysis of the Great Lakes Water Quality Guidance which successfully underwent the full Executive Order 12866 process.

* EPA had already established its own methodology and began work on the EA nearly one year before the Task Force began meeting. In light of the substantial resources that EPA already used in its preparation of the EA, EPA could not fundamentally switch the methodology in the middle of the project due to the limited resources that could be spent on the EA. In addition, many task force members acknowledged that the consensus recommendation was a very resource intensive method and it was uncertain whether adequate data currently existed to bring this methodology to completion. EPA did not have the resources nor the data to perform this type of analysis in the time available.

* The State Task Force recommended a methodology, for future analysis by the State, that would gather ambient data to determine waters that were impaired by toxics, and then determine what actions needed to be taken by point and non-point sources to meet new water quality criteria. EPA determined that this methodology may be appropriate for future State analysis, but was not appropriate for EPA's Economic Analysis since EAs under the CWA typically estimate only costs that EPA can implement under the Clean Water Act. Therefore, EPA's EA only calculates potential costs and benefits due to controls on NPDES point sources (excluding wet-weather discharges). EPA believes it may be more appropriate for the State to estimate potential impacts on non-point sources since it has the sole authority for implementing any controls required by non-point sources.

EPA does not agree that its decision to use a 10-6 risk level for carcinogenic pollutants conflicts with any of the State Task Force consensus recommendations. EPA does not observe in the Final Task Force Report, an explicit consensus recommendation of any specific risk level for carcinogenic pollutants.

Comment ID: CTR-054-017
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Overall Conclusions

When EPA concludes that the costs and benefits of the CTR are of similar magnitude, EPA is comparing apples with oranges.

* The costs are based on the estimated costs of point source controls, which would be required as a result of the CTR.

* The benefits are based on the assumption that nonpoint source controls, which would not be required as a result of the CTR will be implemented (nonpoint sources are not regulated under the Clean Water Act).

The Economic Analysis is based an procedures and assumptions that greatly understate costs and overstate benefits.

Based on estimates prepared by municipal wastewater and stormwater organizations, the costs of the CTR could be as high as $8 billion annually, almost two orders of magnitude greater than the high-end costs estimated by EPA ($85 million annually).

Based on case study analyses of benefits by municipal wastewater and stormwater organization, the benefits of the CTR could be immeasurable and possibly even negative (For example, the CTR could force the removal of treated wastewater and stormwater from effluent dependent waters and thereby

destroy the aquatic and riparian habitat created by the discharges). In large part, the absence of benefits is due to the fact (which EPA acknowledges in its analysis) that point sources are minor sources of toxic pollutants, and the fact that the major sources (i.e., the nonpoint sources) are not regulated under the Clean Water Act or the CTR.

EPA inappropriately compares costs for reducing pollutants that would be reduced as a result of the CTR (e.g., metals) with the benefits derived from the reduction of pollutants that will not be controlled as a result of the CTR (e.g., DDT).

EPA should prepare a new economic analysis using the following approach:

* Compare costs for point sources controls with benefits that will result from implementation of those controls using representative case studies.

* Compare costs and benefits on a pollutant-by-pollutant basis.

Response to: CTR-054-017

See responses to CTR-041-018, CTR-054-013a, CTR-040-042, CTR-035-057, CTR-056-018, CTR-021-008, and CTR-021-006b.

Comment ID: CTR-054-018
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES

Comment: Review of EPA's Analysis of Potential Costs

EPA incorrectly asserts that the water quality criteria in the CTR will not directly impose economic impacts. In fact, the CWA requires that NPDES permits contain effluent limits necessary to achieve water quality criteria, and EPA regulations and guidelines (as well as the CTR) specify the methods that must be used to calculate effluent limits. Although the State has some flexibility, the flexibility is limited. The CTR will impose impacts.

Response to: CTR-054-018

See responses to CTR-009-008a, CTR-021-005c, and CTR-056-018.

Comment ID: CTR-059-026
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority

State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES E-01g08

Comment: Based on these and other issues discussed in the comments submitted by Tri-TAC & CASA, we strongly urge EPA to revise its Economic Analysis, and recommend that EPA and the SWRCB work together with stakeholders to craft a revised approach that is mutually acceptable. We would be pleased to assist in such an effort.

Response to: CTR-059-026

See response to CTR-034-016.

Comment ID: CTR-091-002a
Comment Author: Abu-Saba, Ganguli, Flegal
Document Type: Environmental Group
State of Origin: CA
Represented Org: Coastal Advocates
Document Date: 09/25/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? N
CROSS REFERENCES E-02

Comment: This comment addresses the mercury criteria for continuous concentration (CCC) proposed in 40 CFR, part 131(*1). The proposed aquatic health and human health criteria do not protect aquatic life or humans from mercury contamination. This is demonstrated by the scientific data presented herein. That information includes published and unpublished results from scientists with established reputations in environmental research.

The aquatic life mercury CCC is proposed to be raised sixty-fold, from the National Toxics Rule standard of 0.012 micrograms per liter (ppb) to 0.770 ppb. The human health criteria is proposed to be raised four-fold, from 0.0 12 ppb to 0.050 ppb. These proposed changes have potentially devastating economic and environmental costs that must be included in the EPA's cost-benefit analysis. Water treatment costs for the metals mercury, silver, and chromium account for 30% of costs projected in the, California Toxics Rule (CTR) economic analysis. However, the long term environmental and economic cost of mercury contamination may far exceed the short term economic savings resulting from an increase in the mercury CCC. This is especially true in California, a mining state that has devoted hundreds of millions of dollars to restoration and enhancement of commercial and sport fisheries by enactment of Proposition 204.

The potential long-term economic and environmental costs of this proposed legislation far exceed any short-term benefits gained by raising the mandatory action level for mercury contamination. A stated goal of the recently passed Proposition 204 legislation is the protection and enhancement of commercial

and sport fishing in the State of California. To that end, hundreds of millions of dollars have been committed to water quality improvement and fish habitat restoration. Increasing the permissible mercury limits will not only hinder those goals, but will likely cause irreversible damage to the environment well into the foreseeable future.

(*1) Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule. U.S. Environmental Protection Agency, Region Nine; U.S. Government Printing Office: Washington D.C., 1997; Federal Register, 62, 42159-42207.

Response to: CTR-091-002a

The aquatic life criteria have been updated using EPA's peer-reviewed and accepted aquatic life methodology. The previous 304(a) criteria guidance value was based on an FDA action level for humans, not on aquatic life protection. As such, the previous criteria are not as appropriate to use as the updated criteria proposed in the CTR. The revised criteria are less stringent than the previous criteria. The human health criteria proposed in the CTR have also been updated using the risk reference dose for methylmercury. The previous 304(a) criteria guidance values were based on the risk reference dose for mercury. The revised human health criteria in the CTR are more stringent than the previous human health criteria guidance.

All water quality standards are comprised of three parts: a designated use, criterion, and an antidegradation requirement. The CTR only proposes criteria. The State of California has adopted designated uses for its water bodies (called beneficial uses) in the Regional Water Board Basin Plans. The State has also adopted antidegradation provisions in each of the Regional Board Basin Plans. These provisions require that water quality in a waterbody cannot be degraded (with narrow exceptions as discussed at 40 CFR 131.12(a) (2) which allow a lowering of water quality if the State finds that it is necessary to accommodate important economic or social development). Thus, if a waterbody has achieved a certain level of cleanliness or is in a pristine condition, discharges are not allowed to degrade the water quality. Therefore, no environmental "cost" or degradation will be incurred as a result of any new or revised water quality criteria in the CTR that may be less stringent than a previously adopted objective or a criteria guidance value. Environmental benefits that have been gained in California fisheries or anywhere else cannot be destroyed.

Comment ID: CTR-107-001
Comment Author: Brian E. Hill
Document Type: Citizen
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? Y
CROSS REFERENCES

Comment: This letter is in regards to the U.S. Environmental Protection Agency (EPA) proposing water quality standards for priority toxic pollutants in California. This is referred to as the California Toxics Rule (CTR). Due to the fact that I work in the Water Pollution Control Industry, I am following this

issue very closely. However, this letter is coming from a concerned tax payer.

As you may already know, under provisions of the Clean Water Act every state is required to have water quality standards for priority toxic pollutants. In 1994 California's version of that provision was overturned in State court due to a violation in the implementation of the rule. Subsequently, the U.S. EPA has proposed a rule in order to bring California into compliance. The criteria proposed by the U.S. EPA are extremely stringent and could cost California taxpayers hundreds of millions of dollars.

Response to: CTR-107-001

Although EPA promulgated specific criteria for the State of California under the CTR, EPA promulgated ambient water quality criteria for the entire United States, including California, under the National Toxics Rule (NTR), and the costs of the NTR are borne by dischargers in all NTR States. The [document name] compares the NTR to the CTR and demonstrates that the CTR criteria are rarely, if ever, more stringent than the NTR criteria. Thus, dischargers face a "level playing field" across California and NTR States. See also response to CTR-021-005c.

Comment ID: CTR-107-002a
Comment Author: Brian E. Hill
Document Type: Citizen
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01 Cost Analysis
References:
Attachments? Y
CROSS REFERENCES G-02
E-01n

Comment: On September 17, I attended a hearing on the proposed CTR at the EPA's regional office in San Francisco. Here are some key issues from the testimony at that hearing:

* Some of the limits are below normal detection limits, therefore agencies have no background data in order to perform accurate attainability analysis.

* The cost of implementation by the EPA is grossly underestimated. The economic analysis shows a maximum implementation cost of $87 million. If preliminary estimates by publicly owned treatment works (POTW) are correct, implementation of the CTR will far exceed the $100 million provision of the Porter-Cologne Act. If this is the case, feasibility of implementation will be in jeopardy. The City of Merced, CA estimates that their additional cost would be $4 million annually. Merced has a very small treatment facility.

* Robert Reid, speaking on behalf of California Association of Sanitation Agencies (CASA), said that four San Francisco Plants estimate their total implementation costs to be $160 million annually.

* Charles Batts of Bay Area Dischargers Authority (BADA) estimated five BADA POTWs costs to be $12 million per year to meet the strict limit on copper and $56 million per year to meet the organics limit.

* The Regional Water Quality Control Board testified that San Francisco discharges twenty percent of the four percent discharged into the San Francisco Bay by POTWs, noting that POTWs are only a minor part of the volume discharged into the Bay. Thus, the reduction to the prescribed limits would cause a negligible decrease in the total mass of pollutants discharged.

* The City of Sacramento projects a $200 million annual cost will be required to meet the copper limit.

All of the testimony at the hearing echoed these concerns. I am sure that you have access to a transcript. The Clean Water Act has been and is instrumental in cleaning up our rivers, lakes, bay and estuaries. We can continue on this steady path by setting gradual attainable limits and through increased public education. Limits on pollutants should continue to get stricter, but this has to occur on a gradual curve that will not place an unreasonable burden on the individual taxpayer.

Response to: CTR-107-002a

Regarding limits being below detection levels see response to CTR-035-064.

EPA disagrees that costs are underestimated. For further discussion, see responses to CTR-040-039 and CTR-035-011a. EPA also disagrees with the $4 million annual cost estimate for Merced, the $160 million annual estimate for the four San Francisco plants, the BADA POTW cost estimates, and the $200 million cost estimate for copper for the City of Sacramento,however, no supporting data were provided for EPA to be able to evaluate these cost estimates. EPA evaluated the City of Merced facility as one of its sample facilities and estimated costs for Merced to range from $140,000 to $590,000 annually. EPA believes that pollution prevention and process optimization would be sufficient for Merced to ensure compliance with CTR-based limits. EPA also evaluated Sacramento as another sample facility and did not estimate reasonable potential for copper. EPA's cost estimate for Sacramento for the control of lead and mercury ranged from $90,000 to $320,000 annually for pollution prevention and process optimization.

EPA disagrees with the commenter that the decrease in the mass of pollutants discharged to San Francisco Bay would be negligible (as the San Francisco POTW represents only 20% of the 4% that POTWs contribute to the total mass discharged). Commercial and industrial facilities will also be required to meet CTR-based effluent limits which may result in additional reductions in mass discharges. EPA is promulgating the CTR criteria in order to protect human health and the aquatic environment which will benefit from pollutant reductions as is described in the Economic Analysis of the final CTR.

See also responses to CTR-041-018, CTR-038-003, CTR-056-018, CTR-021-005c, and CTR-021-010.

Subject Matter Code: E-01a Baselines

Comment ID: CTR-040-035
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y

CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-040-035

See response to CTR-040-026.

Comment ID: CTR-041-031
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-041-031

See response to CTR-040-026.

Comment ID: CTR-044-026
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-044-026

See response to CTR-040-026.

Comment ID: CTR-054-030
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-054-030

See response to CTR-040-026.

Comment ID: CTR-092-017
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01a Baselines
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Comment #1: Application of the Analysis to San Jose

The derivation of the baseline cost models utilized in the Economic Analysis is detailed and complex. One element of Model 2, the benchmarks for the Low End and High End Cost Scenarios, can be extracted and highlighted as problematic for San Jose. Briefly, the cost of implementation of the CTR is measured by variation, at the low end, between current effluent concentrations and the concentrations which might be allowed by the CTR; and at the high end, by the difference between current permit limits and limits which might be allowed by the CTR.

The high end benchmark assumes that POTW's are already in compliance with their NPDES permit limits so that costs of "new" regulations, e.g. the CTR, can be segmented from "old" regulations, or existing permit compliance costs. In cases where a POTW is not in permit compliance on a particular element, the Model 2 high end benchmark assumes that there is no cost incurred due to federal implementation of the California Toxics Rule. This implies that any costs incurred in meeting the CTR

are really costs of getting into compliance with State regulation.

Questions for EPA on Comment #1

Q. 1 - 1) Did EPA undertake any sensitivity analysis to measure the impact of the high end assumptions on the $87 million high end cost estimate for overall CTR implementation? What if, for analytic purposes, the high end assumption was modified such that costs of attaining permit compliance (for all POTW's who are not in compliance on some element) was considered as a proxy for Rule implementation costs -- what increment of cost would be added to the $87 million estimate?

Q. 1-2) Under the existing assumptions, what share of the $87 million high end cost was attributable to the San Jose/Santa Clara POTW? What was San Jose/Santa Clara's contribution to the low end cost?

Q. 1-3) What would San Jose/Santa Clara POTW contribution be to the modified high end case, under the assumptions stated in Q. 1 - 1, above?

Response to: CTR-092-017

The methodology used to analyze each facility was described in detail in the cost report, Economic Analysis (EA), and technical support document that accompanies the record for the final rule. Following the public comment period for the proposed rule, EPA conducted a revised analysis of the potential costs and benefits of the rule (high scenario costs are estimated to be $61 million). EPA used the same methodology for estimating costs for the final rule but developed a completely updated data set for each of the sample facilities. The updated data represent the most recent three years of data available from public sources for each facility. EPA also considered any data submitted during the public comment period. Therefore, EPA's revised analysis should reflect representative information for each facility. The revised analysis of costs is again presented in detail in the EA and technical support document for the final CTR.

EPA did not estimate the costs for facilities to come into compliance with existing permit limits (see response to CTR-092-019). EPA does not agree with the commenter that this would be a suitable proxy for CTR implementation costs because ensuring compliance with existing permit limits represents costs that facilities would incur regardless of the CTR. Such an estimate would double count those costs attributable to existing state regulations and existing permit limits, instead of accounting for only those costs attributable to the CTR. See response to CTR-092-019.

Nonetheless, if San Jose's costs were evaluated as the commenter suggests (i.e., the cost of attaining permit compliance is used as a proxy for CTR implementation costs), there would be no change from EPA's current cost estimate. Twenty-one of 25 observations for copper are below the CTR-based limitand the existing permit limit. The maximum effluent concentration exceeds the existing permit limit, however, no costs other than pollution prevention costs estimated under EPA's high scenario would be incurred to ensure compliance with the CTR-based limit.

Subject Matter Code: E-01a Baselines

Comment ID: CTR-040-035
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-040-035

See response to CTR-040-026.

Comment ID: CTR-041-031
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-041-031

See response to CTR-040-026.

Comment ID: CTR-044-026
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97

Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-044-026

See response to CTR-040-026.

Comment ID: CTR-054-030
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a Baselines
References:
Attachments? N
CROSS REFERENCES

Comment: In its high-end cost scenario, EPA accepted existing permit limits as a baseline even if those permit limits were based on the old State Plans. In fact, permit limits based on the illegal State Plans are themselves illegal and do not constitute an appropriate baseline.

Response to: CTR-054-030

See response to CTR-040-026.

Comment ID: CTR-092-017
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01a Baselines
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Comment #1: Application of the Analysis to San Jose

The derivation of the baseline cost models utilized in the Economic Analysis is detailed and complex.

One element of Model 2, the benchmarks for the Low End and High End Cost Scenarios, can be extracted and highlighted as problematic for San Jose. Briefly, the cost of implementation of the CTR is measured by variation, at the low end, between current effluent concentrations and the concentrations which might be allowed by the CTR; and at the high end, by the difference between current permit limits and limits which might be allowed by the CTR.

The high end benchmark assumes that POTW's are already in compliance with their NPDES permit limits so that costs of "new" regulations, e.g. the CTR, can be segmented from "old" regulations, or existing permit compliance costs. In cases where a POTW is not in permit compliance on a particular element, the Model 2 high end benchmark assumes that there is no cost incurred due to federal implementation of the California Toxics Rule. This implies that any costs incurred in meeting the CTR are really costs of getting into compliance with State regulation.

Questions for EPA on Comment #1

Q. 1 - 1) Did EPA undertake any sensitivity analysis to measure the impact of the high end assumptions on the $87 million high end cost estimate for overall CTR implementation? What if, for analytic purposes, the high end assumption was modified such that costs of attaining permit compliance (for all POTW's who are not in compliance on some element) was considered as a proxy for Rule implementation costs -- what increment of cost would be added to the $87 million estimate?

Q. 1-2) Under the existing assumptions, what share of the $87 million high end cost was attributable to the San Jose/Santa Clara POTW? What was San Jose/Santa Clara's contribution to the low end cost?

Q. 1-3) What would San Jose/Santa Clara POTW contribution be to the modified high end case, under the assumptions stated in Q. 1 - 1, above?

Response to: CTR-092-017

The methodology used to analyze each facility was described in detail in the cost report, Economic Analysis (EA), and technical support document that accompanies the record for the final rule. Following the public comment period for the proposed rule, EPA conducted a revised analysis of the potential costs and benefits of the rule (high scenario costs are estimated to be $61 million). EPA used the same methodology for estimating costs for the final rule but developed a completely updated data set for each of the sample facilities. The updated data represent the most recent three years of data available from public sources for each facility. EPA also considered any data submitted during the public comment period. Therefore, EPA's revised analysis should reflect representative information for each facility. The revised analysis of costs is again presented in detail in the EA and technical support document for the final CTR.

EPA did not estimate the costs for facilities to come into compliance with existing permit limits (see response to CTR-092-019). EPA does not agree with the commenter that this would be a suitable proxy for CTR implementation costs because ensuring compliance with existing permit limits represents costs that facilities would incur regardless of the CTR. Such an estimate would double count those costs attributable to existing state regulations and existing permit limits, instead of accounting for only those costs attributable to the CTR. See response to CTR-092-019.

Nonetheless, if San Jose's costs were evaluated as the commenter suggests (i.e., the cost of attaining permit compliance is used as a proxy for CTR implementation costs), there would be no change from EPA's current cost estimate. Twenty-one of 25 observations for copper are below the CTR-based

limitand the existing permit limit. The maximum effluent concentration exceeds the existing permit limit, however, no costs other than pollution prevention costs estimated under EPA's high scenario would be incurred to ensure compliance with the CTR-based limit.

Subject Matter Code: E-01a02 Cost Diff. for Eff. Limit

Comment ID: CTR-035-058
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a02 Cost Diff. for Eff. Limit
References:
Attachments? N
CROSS REFERENCES

Comment: Weaknesses in Cost Analysis

The report's cost estimates exhibit a number of significant weaknesses, as follows:

* Omission of other 'baseline'' costs may act to artificially reduce USEPA's estimates.

USEPA's baseline adjustment (U.S. EPA, 1997a, page 5-7) implies that the costs associated with meeting existing requirements which are currently not being met should be excluded from the analysis. However, to the extent that these costs are higher than the report's cost limit triggers (e.g., $200/$500), both costs and the benefits associated with them should be eliminated in the analysis. That is, USEPA's assumption that dischargers will not be required to undertake improvements above a certain expense level should be carried through the entire analysis to be consistent. Alternatively, if existing requirements must be met prior to rule compliance, these costs should be estimated and reported.

Response to: CTR-035-058

EPA's economic analysis measures the potential incremental costs and benefits of the rulemaking relative to compliance with current requirements. It is not appropriate for EPA to estimate costs and benefits associated with compliance with current requirements. To the extent that costs were eliminated from the analysis, benefits (loading reductions) were also eliminated from the analysis. That is, EPA did not count benefits without counting the costs of achieving those benefits.

Comment ID: CTR-060-018
Comment Author: San Diego Gas and Electric
Document Type: Electric Utility
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01a02 Cost Diff. for Eff. Limit
References:
Attachments? N
CROSS REFERENCES

Comment: PROVISIONS SDG&E DOES NOT SUPPORT

As described in the following comments SDG&E does not support the following provisions:

Economic Analysis is deficient

Secondly, it was not clear from the analysis what monitoring data and/or effluent limits were evaluated in comparison to EPA's baseline (i.e., in-plant wastestreams or once-through cooling water or combined discharge of all wastestreams) and what specific methods of compliance modifications were used to estimate compliance costs. If the wastestream evaluated was the gross combined discharge, the estimated costs are potentially severely underestimated. Once through cooling water contains ambient concentrations of pollutants when it is drawn from the source water body. If these same pollutants are the reason why the discharge does not comply with the new criteria, and the plant would have to treat the once-through cooling water to achieve compliance, the costs would be in the hundreds of million of dollars in capital costs to construct the treatment facilities necessary to comply at each power plant.

Response to: CTR-060-018

The analysis of the two sample electric utilities (Pacific Gas and Electric, Hunter's Point and San Diego Gas and Electric, South Bay) does not indicate that ambient water used for cooling would need to be treated because of the CTR. For instance, influent monitoring reports for the Hunter's Point facility indicate that all metals were consistently reported below detection levels with the exception of zinc that was detected, however, not at concentrations of concern. EPA believes that the source of pollutants in electric utilities is low volume waste such as from lubricating and metal cleaning processes. These operations generate low flow, high concentration effluents that are discharged together with cooling waters. In cases of infrequent non-compliance, as with copper at Hunter's Point, process optimization is sufficient to ensure compliance. In cases of more severe non-compliance, waste stream separation and treatment may be recommended.

Subject Matter Code: E-01a03 Model 1 Weaknesses

Comment ID: CTR-035-045
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a03 Model 1 Weaknesses
References:
Attachments? N
CROSS REFERENCES

Comment: B. Cost Analysis p. 2-1 (U.S. EPA, 1997b) - Model I Baseline in Cost Analysis

Model I assumes that, in the absence of the CTR, the State would, pursuant to the NPDES regulations rely on the narrative standards in Basin Plans to establish numeric water quality-based effluent limits in permits. EPA thereby contends that permit limits adopted under Model I could be based on the latest EPA 304(a) criteria. Under this scenario, EPA believes that permit limits would be "nearly identical" to those that would result from implementation of the CTR criteria, and that "the costs and benefits of the CTR would be negligible since implementation of permits under the CTR would not differ significantly from how the State may implement permits under current law." We believe this to be a flawed analysis, and that EPA must delete or modify the Model I baseline. EPA's suggestion that EPA's action has no impacts is equivocal: either EPA is taking an action in proposing the rule or it is not. If it is not taking an action, then it need not propose a rule. If it is taking an action, then this action must have implications. In any case, we believe the analysis is flawed. Under federal regulations (40 CFR section 122.44(d)(iv)), in the absence of the CTR, State permit writers could utilize many more documents than just the 304(a) criteria when adopting permit limits based on narrative standards. These sources of information could easily result in effluent limits that are more or less stringent than the CTR-proposed criteria. Thus, the Model I baseline is fundamentally flawed.

Response to: CTR-035-045

See responses to CTR-035-058 and CTR-021-005c.

EPA believes that the use of 304(a) criteria provides a reasonable estimate of current regulatory requirements because the criteria represent its national recommendations. Additionally, if permit writers deviate from the criteria, they must have a basis for doing so. For example, using field data to modify the criteria on a site-specific basis would require an amendment to the rule.

Comment ID: CTR-035-057
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a03 Model 1 Weaknesses
References:

Attachments? N
CROSS REFERENCES

Comment: Weaknesses in Cost Analysis

The report's cost estimates exhibit a number of significant weaknesses, as follows:

* The assertion that a plausible alternative baseline (i.e., "Model I ") would indicate "no impacts" from the USEPA's rule is weak:

-- Either USEPA is taking an action in proposing the rule, or it is not. If it is not taking an action, then it need not propose a rule. If it is taking an action, then this action must have implications.

-- By definition the baseline cannot be some mythical state action that would occur if USEPA did nothing. The baseline, as described further in the Rule, is current regulation, which at this point reflects no state action in this area. If and when the state issues a regulation, the USEPA Rule can be compared with the state rule to determine benefit and cost differences.

-- The color of money stays the same whether federal or state governments take action. That is, affected parties are indifferent as to who is "scored" with water quality costs.(*5)

-- If there are potentially no costs, there are likewise potentially no benefits, an outcome which is not provided equal credence in the Analysis.

USEPA's Model I approach in this rule is the opposite of the tactic it took in proposing the 1994 State Implementation Plan (SIP) to meet air quality requirements. In Its analysis of this action USEPA provided estimates of SIP costs in the face of no state action, despite the fact that California was required to meet federal air quality standards.

(*5) However, whether the federal or state government is deemed responsible for rule costs may have important legal implications (e.g., different requirements for economic analyses).

Response to: CTR-035-057

See response CTR-040-026.

EPA believes that the potential benefits of the rule are reasonably similar to the potential costs. EPA also notes that, as described in the EA, the estimate of benefits may be underestimated as a result of omitted benefit categories while the estimate of costs was based on assumptions that tend to overstate costs. For example, reductions in noncancer health effects are omitted because there are currently few means of linking consumption of toxic contaminants by humans with cases of systemic effects (as opposed to cancer effects, for which dose-response curves have been estimated). Other omitted benefit categories include instream and near stream recreational activities other than fishing (e.g., boating, swimming, picnicking, and related activities). EPA believes other recreation benefits may be appreciable because these activities have been shown in empirical research to be highly valued, and even modest changes in participation or user values could lead to sizable benefits statewide. Some of these activities can be closely associated with water quality attributes (e.g., swimming) and others might increase due to their association with fishing, swimming, or other activities in which the participants might engage.

EPA recognizes that the benefits of the rule will not occur immediately, and has estimated lags in the realization of benefits. However, EPA believes that the standards established by the CTR can be achieved through point source controls and will result in attaining designated uses of the water bodies, and that the estimated benefits are illustrative of the types and potential benefits to be achieved from attaining these uses.

Comment ID: CTR-040-026
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a03 Model 1 Weaknesses
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: EPA's Model 1 Scenario erroneously assumes that without the CTR, implementation of the States narrative criterion "would likely result in permit limits that are nearly identical to those that would result from implementation of the CTR criteria." On the contrary, this is highly unlikely based on: (1) the Water Code requirements to consider economics in establishing objectives and adopting permits; (2) the court decision that threw out the same EPA criteria because the State failed to consider economics and other factors by the Water Code; and (3) most basin plans do not contain language that authorizes direct utilization of the criteria in implementing the narrative toxicity objective. In fact, EPA's assertion, quoted above, is contradicted a few paragraphs later: "...since the plans were revoked, permit writers no longer use the criteria contained in the plans." (see page ES-2). In fact, in the three years since the State Plans were rescinded, very few permits have been issued with limits based on EPA criteria.

Response to: CTR-040-026

EPA disagrees with the comment. EPA believes that in the absence of the CTR, implementation of the state narrative criterion would likely result in permit limits nearly identical to those that would result from implementation of the CTR criteria. While it is true that EPA acknowledged in the EA that new effluent limits are not likely to be based on the criteria contained in the old Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan since these plans were withdrawn by the State, EPA has observed that, in several recently issued permits, the State has developed new effluent limits based on EPA recommended 304(a) criteria. EPA's 304(a) criteria are nearly identical to the CTR criteria. Therefore, EPA believes that its statement about the State's use of narrative criteria does not contradict itself as the commenter asserts.

Comment ID: CTR-041-022
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97

Subject Matter Code: E-01a03 Model 1 Weaknesses
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's Model 1 Scenario erroneously assumes that without the CTR, implementation of the States narrative criterion "would likely result in permit limits that are nearly identical to those that would result from implementation of the CTR criteria." On the contrary, this is highly unlikely based on: (1) the Water Code requirements to consider economics in establishing objectives and adopting permits; (2) the court decision that threw out the same EPA criteria because the State failed to consider economics and other factors by the Water Code; and (3) most basin plans do not contain language that authorizes direct utilization of the criteria in implementing the narrative toxicity objective. In fact, EPA's assertion, quoted above, is contradicted a few paragraphs later: "...since the plans were revoked, permit writers no longer use the criteria contained in the plans." (see page ES-2). In fact, in the three years since the State Plans were rescinded, very few permits have been issued with limits based on EPA criteria.

Response to: CTR-041-022

See response to CTR-040-026, CTR-035-045, CTR-035-058, and CTR-021-005c.

Comment ID: CTR-044-017
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01a03 Model 1 Weaknesses
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's Model 1 Scenario erroneously assumes that without the CTR, implementation of the States narrative criterion "would likely result in permit limits that are nearly identical to those that would result from implementation of the CTR criteria." On the contrary, this is highly unlikely based on: (1) the Water Code requirements to consider economics in establishing objectives and adopting permits; (2) the court decision that threw out the same EPA criteria because the State failed to consider economics and other factors by the Water Code; and (3) most basin plans do not contain language that authorizes direct utilization of the criteria in implementing the narrative toxicity objective. In fact, EPA's assertion, quoted above, is contradicted a few paragraphs later: "...since the plans were revoked, permit writers no longer use the criteria contained in the plans." (see page ES-2). In fact, in the three years since the State Plans were rescinded, very few permits have been issued with limits based on EPA criteria.

Response to: CTR-044-017

See responses to CTR-040-026 and CTR-035-045.

Comment ID: CTR-054-021
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01a03 Model 1 Weaknesses
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's Model 1 Scenario erroneously assumes that without the CTR, implementation of the States narrative criterion "would likely result in permit limits that are nearly identical to those that would result from implementation of the CTR criteria." On the contrary, this is highly unlikely based on: (1) the Water Code requirements to consider economics in establishing objectives and adopting permits; (2) the court decision that threw out the same EPA criteria because the State failed to consider economics and other factors by the Water Code; and (3) most basin plans do not contain language that authorizes direct utilization of the criteria in implementing the narrative toxicity objective. In fact, EPA's assertion, quoted above, is contradicted a few paragraphs later: "...since the plans were revoked, permit writers no longer use the criteria contained in the plans." (see page ES-2). In fact, in the three years since the State Plans were rescinded, very few permits have been issued with limits based on EPA criteria.

Response to: CTR-054-021

See response to CTR-040-026.

Subject Matter Code: E-01b Cost Triggers

Comment ID: CTR-021-017
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Several fundamental problems exist with the analysis that was conducted in Section 2 "Methodology" of the "Analysis of Potential Costs Related to the Implementation of the California Water Quality Toxics Rule" document. Given flaws in the methodology, the results presented in Appendices I-B, II-B, and IIIB are misleading at best and in some cases incorrect. The following is a summary our comments regarding the methodology used and the results presented.

METHODOLOGY

* Page 2- 10 states: "For any pollutant for which a limit for a toxic pollutant existed in the current NPDES permit for a sample facility, it was assumed that a reasonable potential existed to exceed a CTR based limit and the pollutant was included for further analysis." This is an unreasonable assumption because many local regulators have been resistant to exclude pollutants with no reasonable potential to exceed the permit limit from NPDES permits. In other words, it is very common to find pollutants regulated in NPDES permits which either have not been detected or have been detected in levels significantly below the permit limits. Therefore, assuming that a reasonable potential to exceed the permit limit exists simply because a toxic pollutant is listed in the NPDES permit, is an incorrect assumption. Further, the propagation of this error leads to incorrect economic implications.

Based on the TSD and properly computed effluent limits, a reasonable potential analysis first needs to be conducted for each toxic pollutant to determine a maximum projected effluent quality, and that value then needs to be compared to the CTR based limit to determine if there is a reasonable potential for the limit to be exceeded. If there is a potential for the limit to be exceeded, economic estimates may then be made. In the analysis that was conducted, a reasonable potential to exceed the effluent limit was assumed for each constituent with an effluent limit in the NPDES permit, and potential costs were computed based on the difference between the current and future effluent limits regardless of plant performance. Clearly, this is a flawed, incorrect, and misleading approach,

* WLA[subs]a and WLA[subs]c are based on theoretical partitioning factors. These may or may not be representative of the conditions noted in site specific water bodies. A translator study, conducted specifically for the City of Sunnyvale demonstrates that the relationship between the partition if coefficient and TSS is not nearly as strong as that between the translator and ln(TSS) (the natural logarithm of TSS). WLA would be better computed using a site specific translator, wherever data are available. City of Sunnyvale calculations following guidance described in EPA 823-B-96-007 (The Metals Translator: Guidance for Calculating a total Recoverable Permit Limit from a Dissolved Criterion), demonstrate that significantly different results may be obtained from those presented in Exhibit 2-8 when site specific data are used;

* Another variable which significantly affects the values used to convert from dissolved criteria to total criteria is TSS. The TSS value used to compute the partitioning factor found in Exhibit 2-8 is 15 mg/L, which is lower than any data observed by the City of Sunnyvale between September 1989 and February 1991. Those data indicate that a more representative although still conservative value would be approximately 35 mg/L;

* Summary statistics of the dataset used are needed for each constituent (mean, standard deviation, and coefficient of variation). Further, the full datasets used for the analysis should be included as an appendix so that data trends may be inspected. Typically, as was the case with Sunnyvale but ignored in this analysis, metals concentrations decreased as source control measures have been implemented.

* Identification and exclusion of statistical outliers from the analysis is a critical step which is not addressed in Section 2 "Methodology". Since, the reasonable potential analysis estimates the projected maximum concentration for each constituent on the maximum observed value in the given dataset, identification and exclusion of outliers from the analyses must be considered.

* Table I-B-4 (and II-B-4, and III-B-4) should show the following columns: Reasonable Potential Analysis Projected Maximum Concentration; CTR based WQBEL; Flag; Maximum Observed Concentration; Flag. This structure would make the analyses much clearer. The determination of constituents of potential concern should then be conducted as follows: compute the projected maximum projected concentration for each pollutant, compute conservative estimates of CTR based limits (based on standard translators and TSS values), and compare the CTR based limit to the projected maximum reasonable potential value and the maximum observed concentrations. Constituents of potential concern will be those whose projected maximum concentrations are greater than the CTR based WQBEL.

Further, it needs to be noted that care must be taken to compare the projected maximum concentration with the correct (MDL or AML) CTR limit to determine if a reasonable potential exists to exceed the limit. This will primarily be a function of monitoring frequency. However, it appears that this step was overlooked in the preliminary analyses presented in Appendices I-B, II-B, and III-B. The analyses in those appendices (refer to Table I-B-4) compares the existing limit ("existing high end") to the CTR average monthly limit ("CTR"), and then bases economic extrapolation on that comparison. For example, the current daily limit for silver, 2.3 mg/L is compared to the computed average monthly CTR limit of 1.76 mg/L, and the conclusion is drawn that the City will need to decrease the amount of silver in the effluent. A more reasonable comparison would have been to compare the projected maximum concentration to the proposed CTR daily maximum limit.

* LTAs were computed using the 95%ile for chronic WLAs and the 99%ile for acute WLAs, without an explanation for the apparent disparity. Since in many cases the chronic WLA is lower than the acute WLA, the resultant CTR derived permit limits are based on the 95%ile rather than the 99%ile (e.g. a lower limit than would have been obtained if the 99%ile values were used). In order to determine if a reasonable potential exists for a pollutant to exceed a given permit limitation, consistency is necessary. It is suggested that all computations (reasonable potential analysis and CTR based WQBEL) be based on the same standard, so that the implications of the ensuing comparisons are clear. Further, a 99%ile standard is recommended to more fully account for the lognormal nature of pollutant concentrations in treated water.

* It is stated that "Costs were estimated for any pollutant for which either effluent concentrations or existing permit limitations were greater than the CTR-based WQBEL". As noted above, this analysis should be conducted only on pollutants with a reasonable potential to exceed the CTR-based WQBEL

otherwise economic computations will solely be based on the difference between old and new limits without any consideration to plant performance.

* Finally, high end scenario costs are "Based on the difference between an existing permit limit and the WQBELS". It cannot be overemphasized this is unreasonable, because there may be no reasonable potential to exceed this limit. This methodology implies that simply because an effluent limit is in an NPDES permit, a reasonable potential exists to exceed that limit, which is fundamentally incorrect.

Response to: CTR-021-017

* EPA disagrees with Sunnyvale's comment that it is unreasonable to assume that reasonable potential exists for a pollutant when it has a permit limit in its existing NPDES permit. First, EPA determines whether there is reasonable potential to exceed water quality criteria, not permit limits. Second, EPA acknowledges that the Regional Boards may base the decision to assign reasonable potential on methodologies other than those selected from the Technical Support Document for Water Quality-based Toxics Control (U.S. EPA, 1991). For example, EPA is aware that current permitting practices of some Regional Boards in the State of California include assigning permit limits to pollutants identified in the fish tissue report or pollutants included in the 303(d) list of impaired receiving water bodies. EPA incorporated the presumptions of these particular methodologies by assigning reasonable potential in the high scenario when a permit limit exists.

* Sunnyvale stated that EPA incorrectly based high scenario costs on the difference between an existing permit limit and the CTR-based effluent limit when there may be no reasonable potential to exceed the limit. EPA stands by its methodology to assign reasonable potential in the high scenario because of the existence of a permit limit (see above). EPA's methodology would, if anything, overstate potentialcompliance costs in the high scenario because it assumes that the discharger discharges the pollutant at concentrations of concern and that measures may need to be taken to control the pollutant. That is, EPA's methodology may result in estimates of compliance costs that will not be incurred.

* Sunnyvale also indicated that in the draft analysis, potential costs were computed based on the difference between the current and future effluent limits, regardless of plant performance. This statement is incorrect. Where data are available, cost decisions in the high and low scenarios are based on plant performance. However, in the absence of data, EPA's methodology tends to err on the side of estimating higher costs. EPA's rationale for its cost estimates for Sunnyvale is presented in Appendix B of the Technical Support Document for the final Economic Analysis.

* EPA agrees that site-specific translators for metals would better represent the conditions of site-specific water bodies. Therefore, EPA used site-specific translators in its final Economic Analysis whenever they were available. For example, EPA used a copper site-specific translator of 2.6 for Sunnyvale.

* In the final Economic Analysis, EPA does not use a total suspended solids (TSS) value of 35 mg/L for Sunnyvale. EPA instead used a TSS default value of 15 mg/L, which generally provides a more stringent limit for TSS dependent pollutants than using a TSS value of 35 mg/L. Regardless, TSS does not have an effect on the costs estimated for this particular facility because the two metals with reasonable potential (copper and silver) have metals translators which are not dependent on TSS. EPA used a site-specific translator for copper (2.6) and a default translator value (2) for silver because theoretical partitioning coefficients were not available.

* Sunnyvale requested that summary statistics of the data be presented in the analysis and that effluent

monitoring data be included as an appendix. Presently, the Technical Support Document for the Economic Analysis of the CTR does not include these data. However, the effluent data are publicly available and may be obtained from the Permit Compliance System Database (PCS).

* The revised Economic Analysis does not have a methodology to exclude outliers from the sample during reasonable potential and permit limit derivation. As a result, effluent variability may be greater than what it would be when outliers are extracted from the data set. A greater variability is reflected in larger projected effluent qualities (i.e., greater probability of receiving reasonable potential) and more stringent effluent limits, and, therefore, may result in higher costs. Thus, using all data points for the analysis may result in more conservative (i.e., higher) cost estimates. In addition, in order to fit data to a statistical distribution and to identify outliers, a large enough sample (e.g., greater than 20 observations) is required to ensure accuracy. EPA did not have large data sets for most of the sample facilities in the analysis. Despite this, EPA did try to consider outliers and outdated data by using both a cost decision matrix and best professional judgement to estimate costs. However, because of limited data and conservative assumptions, EPA's estimates may tend to overstate cost impacts.

* Sunnyvale proposed analyzing reasonable potential by comparing the projected effluent quality to the projected CTR-based limit. EPA considers this comparison unnecessary because, in the low scenario, EPA's estimate of reasonable potential is already based on projected effluent quality. EPA's reasonable potential approach compares projected effluent quality against water quality criteria, instead of projected CTR-based limits as recommended by Sunnyvale. Because CTR-based limits for metals are expressed as total concentrations and water quality criteria are dissolved, it is likely that Sunnyvale's methodology will result in fewer pollutants with reasonable potential and smaller costs than EPA's approach. EPA's reasonable potential methodology is based on the Technical Support Document for Water Quality-based Toxics Control (U.S. EPA, 1991) and EPA recognizes that its costing methodology may be moreconservative (i.e., erring on the side of higher costs) than other methodologies that could have been used, such as the one suggested by Sunnyvale.

* Please see response to CTR-021-012 regarding the use of the average monthly limit instead of the maximum daily limit to estimate projected compliance costs. Sunnyvale also has suggested estimating compliance costs by comparing the projected effluent quality to the projected CTR daily maximum limit. EPA does not believe that this comparison would be useful for the analysis, because, in addition to the explanation provided in the response to CTR-021-012, the Agency believes that the use of limited data and statistical procedures to determine compliance is an overly conservative approach. EPA would not use such an approach to establish compliance with water quality based limits or criteria (see CTR-040-004) and greater uncertainty would be introduced into the analysis by estimating costs based on statistically projected values rather than actually measured effluent data.

* Sunnyvale indicated that long-term averages (LTA) were computed using a 95% probability basis for chronic waste load allocations (WLA) and a 99% probability basis for the acute WLAs. This statement is incorrect. Acute and chronic LTAs both were calculated using a 99% probability basis. The probability basis selected for the analysis is provided in Section 5.5.4, Probability Basis (page 110), of the Technical Support Document for Water Quality-based Toxics Control (U.S. EPA, 1991). As indicated in that section, when a permitting authority does not have specific guidance for selection of the probability basis, LTAs are calculated using a 99th percentile level for both chronic and acute LTAs.

* Sunnyvale stated that since, in many cases, the chronic WLA is lower than the acute WLA, the resultant CTR-derived permit limit is based on the 95 percent probability rather than the 99% probability (i.e., a lower limit than would have been obtained if the 99% probability values were used). EPA believes that Sunnyvale has misunderstood the methodology used to derive permit limits. The average

monthly limit (AML) and the maximum daily limit (MDL) both are based on the most stringent (i.e., smaller) of the human health and the aquatic life acute and chronic LTAs. The AML is calculated by multiplying the smallest LTA times a multiplying factor that will result in a concentration that is the 95 th percentile level of a lognormal distribution with an upper bound equal to the chronic WLA. The MDL, on the other hand, is obtained by multiplying the smallest LTA times a multiplying factor that will result in a concentration that is the 99 th percentile level of a lognormal distribution and is less than the acute WLA. In other words, the MDL is greater than the AML mainly because it is calculated to be greater than 99% of the effluent concentrations while the AML is calculated to be greater than only 95% of the effluent concentrations. Refer to Table 5-2, Calculation of Permit Limits (page 103), of the Technical Support Document for Water Quality-based Toxics Control (U.S. EPA, 1991) for a list of multiplying factors at different probability levels. Note that the number of samples per month (n) is also used to calculate the AML.

* Sunnyvale requested that all computations (i.e., multipliers) be based on the same percentile levels in order to maintain consistency. As indicated above, the revised economic analysis of the final CTR uses the 99th percentile level to calculate LTAs. In addition, maximum daily limits (MDL) are also based on the 99th percentile level. The average monthly limits (AML), however, cannot be calculated using the same percentile level because this may result in effluent limits that are not protective of water quality. In particular, when the minimum LTA is the LTA based on chronic criteria, the resulting AML would be equal to the WLA based on chronic criteria. While individual exceedances of the AML are permitted, the WLA should never be exceeded; thus an AML calculated using the same percentile level as the MDL would not ensure compliance with chronic aquatic life criteria.

* Sunnyvale suggested that the projected effluent quality value be based on a 99% confidence level anda 99% probability basis. EPA revised its analysis to calculate projected effluent quality values using these confidence level and probability basis values.

See also responses to CTR-052-003b and CTR-092-017.

Comment ID: CTR-034-014b
Comment Author: SCAP
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-034 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES E-01g08
E-01e
E-01v
J

Comment: * In general, we are pleased that EPA prepared an analysis of the economic impacts of the proposed CTR, and that a major portion of EPA's work focused on determining the potential impacts on POTWs. However, we believe that this analysis is based on improper assumptions and inaccurate cost estimates, resulting in unconvincing conclusions. Detailed comments can be found in Attachment 2. A few of the areas of concern are listed below:

* Small facilities appear to be under represented in EPA's sample of POTWS, especially for minor dischargers.

* The cost triggers used as regulatory relief thresholds are unrealistic, and are not consistent with EPA regulations and policies.

* The assumptions used to determine cost estimates for indirect dischargers appear to omit a large proportion of potentially affected industries.

* The Economic Analysis does not take into account projected population and industrial growth over time, which may influence effluent quality and quantity. Statewide, the population is projected to grow by nearly 50% by 2020.

* The use of average cost estimates masks economic impacts on individual dischargers, which may be particularly acute for small communities.

* The economic Analysis ignores the costs that may be incurred by stormwater dischargers and nonpoint sources to reduce loadings so that CTR criteria may be met in ambient waters.

Response to: CTR-034-014b

See responses to CTR-032-004 CTR-035-061, CTR-021-006b, CTR-040-037, CTR-059-018, and CTR-035-048.

Comment ID: CTR-035-047a
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES E-01m

Comment: pp. 2-24 - 2-32 (U.S. EPA, 1997b) - Cost Triggers for Alternative Regulatory Approaches The use of the $200 and $500 cost thresholds significantly skewed potential costs downwards by assuming that when those cost thresholds are reached, regulatory relief options would be pursued successfully, despite the fact that dischargers have absolutely no guarantees that such options will be successful, In the Preamble, in fact, EPA indicates that options such as variances and site-specific criteria will rarely, if ever, be granted. In addition, POTW experiences to date in California suggest that it is unlikely that such options will be successful. Thus, the basic premise of the analytic approach used to determine costs needs to be reconsidered. Incidentally, we also believe that the costs attributed to such activities were seriously underestimated. Information we are familiar with suggests that many of the regulatory alternatives EPA examined can cost up to several million dollars (per pollutant) (e.g. TMDLs, UAAs). Thus, we suggest that in the future when calculating the costs for such activities, EPA should use a range where $200,000/pollutant is the low end scenario and $2,000,000/pollutant is the high end scenario.

Response to: CTR-035-047a

See response to CTR-032-004.

Comment ID: CTR-040-033
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that if the cost per toxic pound equivalent removed is greater than a certain threshold, the discharger would receive regulatory relief and therefore incur no treatment cost. (It is difficult to understand how EPA could rationalize basing the estimate of CTR costs on the assumption that there would be relief from the CTR if the costs were too high, especially when the CTR itself does not provide for such relief.)

Response to: CTR-040-033

See response to CTR-032-004.

Comment ID: CTR-040-040
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES

Comment: EPA's cost analysis relies on an unofficial yard stick for feasibility and regulatory relief ($200 to $500 per toxic pound equivalent removed) that is different and considerably lower than the official yard stick for feasibility that is set forth in EPA's affordability guidelines. EPA uses its affordability guidelines in considering many forms of regulatory relief (e.g., dedesignation of uses). EPA's affordability guidelines set a much higher threshold. For example under these guidelines, reverse osmosis has shown to be affordable at several large POTWs.

Response to: CTR-040-040

See response to CTR-032-004.

Comment ID: CTR-041-029
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that, if the cost per toxic pound equivalent removed is greater than a certain threshold, the discharger would receive regulatory relief and therefore incur no treatment cost. (It is difficult to understand how EPA could rationalize basing the estimate of CTR costs on the assumption that there would be relief from the CTR if the costs were too high, especially when the CTR itself does not provide for such relief.)

Response to: CTR-041-029

See response to CTR-032-004.

Comment ID: CTR-041-036
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's cost analysis relies on an unofficial yard stick for feasibility and regulatory relief ($200 to $500 per toxic pound equivalent removed) that is different and considerably lower than the official yard stick for feasibility that is set forth in EPA's affordability guidelines. EPA uses its affordability guidelines in considering many forms of regulatory relief (e.g., dedesignation of uses). EPA's affordability guidelines set a much higher threshold. For example under these guidelines, reverse osmosis has shown to be affordable at several large POTWs.

Response to: CTR-041-036

See response to CTR-032-004.

Comment ID: CTR-044-024
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that, if the cost per toxic pound equivalent removed is greater than a certain threshold, the discharger would receive regulatory relief and therefore incur no treatment cost. (It is difficult to understand how EPA could rationalize basing the estimate of CTR costs on the assumption that there would be relief from the CTR if the costs were too high, especially when the CTR itself does not provide for such relief.)

Response to: CTR-044-024

See response to CTR-032-004.

Comment ID: CTR-044-031
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's cost analysis relies on an unofficial yard stick for feasibility and regulatory relief ($200 to $500 per toxic pound equivalent removed) that is different and considerably lower than the official yard stick for feasibility that is set forth in EPA's affordability guidelines. EPA uses its affordability guidelines in considering many forms of regulatory relief (e.g., dedesignation of uses). EPA's affordability guidelines set a much higher threshold. For example under these guidelines, reverse osmosis has shown to be affordable at several large POTWs.

Response to: CTR-044-031

See responses to CTR-032-004 and CTR-045-012b.

Comment ID: CTR-054-028
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: Although EPA goes to great length to label its cost analysis as "conservative" the analysis is anything but conservative:

* It is not conservative to assume that, if the cost per toxic pound equivalent removed is greater than a certain threshold, the discharger would receive regulatory relief and therefore incur no treatment cost. (It is difficult to understand how EPA could rationalize basing the estimate of CTR costs on the assumption that there would be relief from the CTR if the costs were too high, especially when the CTR itself does not provide for such relief.)

Response to: CTR-054-028

See response to CTR-032-004.

Comment ID: CTR-054-035
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES

Comment: EPA's cost analysis relies on an unofficial yard stick for feasibility and regulatory relief ($200 to $500 per toxic pound equivalent removed) that is different and considerably lower than the official yard stick for feasibility that is set forth in EPA's affordability guidelines. EPA uses its affordability guidelines in considering many forms of regulatory relief (e.g., dedesignation of uses). EPA's affordability guidelines set a much higher threshold. For example under these guidelines, reverse osmosis has shown to be affordable at several large POTWs.

Response to: CTR-054-035

See response to CTR-032-004.

Comment ID: CTR-056-018
Comment Author: East Bay Municipal Util. Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-056 incorporates by reference letter CTR-054
Attachments? N
CROSS REFERENCES

Comment: Finally, EBMUD has serious concerns about the accuracy of EPA's draft, Economic Analysis, particularly as it pertains to the cost and benefits estimates found in the draft CTR. We believe that the costs of the CTR are significantly underestimated and the benefits are inflated. On the cost side, there are several "flaws" which should be reevaluated:

* The use of assumptions which would tend to underestimate cost.

Response to: CTR-056-018

Based in part on the comments received by EPA on the costs estimated for the proposed CTR, EPA collected new data and information for each of the sample facilities. As a result, EPA revised its estimates of costs and benefits for the final CTR.

A direct comparison of the monetized annual (steady-state) benefits of the CTR and annualized costs shows benefits and costs to be generally commensurate given the uncertainty in the analysis and that several categories of benefits are unmonetized. The low estimate of monetized benefits is $8.7 million per year and the high estimate is $40.8 million per year. Annualized costs are $33.5 million under the low scenario and $61.9 million under the high scenario.

Discounted benefits are lower than discounted costs. However, the assumption that capital is replaced every 10 years likely overstates costs. At the same time, benefits may be understated because some categories are not monetized and full benefits may be realized sooner than 10 or 20 years. Thus, EPA expects that the present value of benefits and costs is more commensurate than shown.

Comment ID: CTR-056-019
Comment Author: East Bay Municipal Util. Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-056 incorporates by reference letter CTR-054

Attachments? N
CROSS REFERENCES

Comment: Finally, EBMUD has serious concerns about the accuracy of EPA's draft, Economic Analysis, particularly as it pertains to the cost and benefits estimates found in the draft CTR. We believe that the costs of the CTR are significantly underestimated and the benefits are inflated. On the cost side, there are several "flaws" which should be reevaluated:

* Assuming that regulatory relief measures will be granted, despite the fact that they are not automatically granted through triggers included as part of the proposed CTR, and using this as the basis for removing costs which exceed threshold values.

Response to: CTR-056-019

See response to CTR-032-004.

Comment ID: CTR-059-019
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01b Cost Triggers
References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES

Comment: Economic Analysis

The Sanitation Districts commends EPA for preparing an analysis of the economic impacts of the proposed CTR, and for selecting POTWs for half of the case studies. We believe that EPA is correct in thinking that POTWs are likely to experience major impacts as a result of the promulgation of the CTR. However, we believe that this analysis is based on improper assumptions and inaccurate cost estimates, resulting in unconvincing conclusions. Our own attainability and cost analysis indicates that there are indeed fundamental flaws in the cost analysis. A few of the areas of concern are listed below:

* The cost triggers used as regulatory relief thresholds are unrealistic, and are not consistent with EPA regulations and policies.

Response to: CTR-059-019

See response to CTR-032-004.

Comment ID: CTR-082-007b
Comment Author: City of Burbank

Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: E-01b Cost Triggers
References:
Attachments? N
CROSS REFERENCES E-01g08

Comment: The subject rule has a significant impact on our facility discharge and the citizens of the City. We therefore present the following comments for your consideration to re-open the comment period for this rule in order to facilitate a more complete review by public and in particular by those in the POTW community:

* The draft economic analysis seems to have serious flaws. It under-estimates the cost of the draft CTR and overstates the benefits. In the cost analysis USEPA should re-evaluate the representativeness of samples used and the omission of impacts on many factors that contribute to loadings, and hence, can be expected to have to reduce their loadings (e.g., small indirect dischargers, municipal and industrial stormwater dischargers, agricultural activities, and other nonpoint sources); the incorporation of numerous assumptions that underestimate costs, and the assumption to artificially remove costs that exceed threshold values by assuming that regulatory relief measures will be granted, despite the fact that they are not automatically granted through triggers included as part of the proposed regulation.

Response to: CTR-082-007b

See response to CTR-032-004.

Subject Matter Code: E-01b01 RegRelief Above Threshold

Comment ID: CTR-066-013b
Comment Author: Delta Diablo Sanitation Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01b01 RegRelief Above Threshold
References:
Attachments? N
CROSS REFERENCES E-01g08

Comment: The areas with which we find concerns and the requested changes include the following:

* The draft Economic Analysis has, from our short review, some serious flaws. It underestimates the costs of the draft to implement the CTR and overestimates the benefits. For the cost analysis, EPA should re-evaluate the representativeness of the sample used; the omission of impacts on many sectors that contribute to loadings and, therefore, can be expected to have to reduce their loadings (e.g., small indirect dischargers, municipal and industrial stormwater dischargers, agricultural activities, and other nonpoint sources); the incorporation of numerous assumptions that underestimate costs; and your assumption that artificially removes costs that exceed threshold values be assuming that regulatory relief measures will be granted, despite the fact that they are not automatically granted through triggers included as part of the proposed regulation.

Response to: CTR-066-013b

See response to CTR-032-004.

Comment ID: CTR-085-016b
Comment Author: Camarillo Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: E-01b01 RegRelief Above Threshold
References:
Attachments? N
CROSS REFERENCES E-01g08

Comment: The District supports the following positions of CASA and SCAP where changes need to be made in the proposed California Toxics Rule:

* The District agrees with CASA and SCAP that the economic analysis has serious flaws. It underestimates the costs of the draft California Toxics Rule and overestimates the benefits. For the cost analysis, the EPA should evaluate the representativeness of the sample used; the omission of impacts on many sectors that contribute to loadings and hence, can be expected to reduce their loadings (i.e., small

indirect dischargers, municipal and industrial stormwater dischargers, agricultural activities and other non-point sources); the incorporation of numerous assumptions that under estimates the costs; and the assumption to artificially remove costs that exceed threshold values by assuming that regulatory relief measures will be granted, despite the fact that they are not automatically granted through triggers included as part of the proposed regulation.

Response to: CTR-085-016b

See response to CTR-032-004.

Comment ID: CTR-092-022b
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01b01 RegRelief Above Threshold
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES E-01c
E-01y

Comment: Comment #6: General Cost Analysis Concerns

The City of San Jose has several generalized concerns about the costs utilized in the Economic Analysis, which raise questions regarding the validity of that analysis, as follows:

Q.6-1) We believe the real point of undertaking the CTR is to assure water quality throughout State that protects beneficial uses. How can the existing Economic Analysis be sufficient if it does not address the cost of meeting the CTR standards from all sources of discharge? Especially given the amount and cost of aggressive intervention in reducing point source pollution undertaken in California to date?

Q.6-2) Throughout the text of the CTR and within the Economic Analysis, EPA refers repeatedly to the assumption that the State will provide regulatory relief to mitigate severe cost impacts engendered by the CTR. What happens to EPA's cost benefit analysis if even one of those assumptions of regulatory relief is not implemented by the State? While we support EPA's attempt to indicate available regulatory options for the State, local level governments and POTW's have little past experience on which to rationalize acceptance of such assumptions.

Q.6-3) EPA has not estimated the cost to local governments/POTW's/indirect dischargers of securing regulatory relief, nor has that cost been incorporated into the estimate of the CTR impact. How would EPA estimate the cost of securing regulatory relief and how would that additional cost affect the Economic Analysis? Especially since very costly studies may be required in order to qualify for regulatory relief.

Q.6-4) The preamble to the CTR discusses the linkage between the CTR and the National Toxics Rule, and EPA's intent to create a level playing field by setting the CTR standards within the National Toxics Rule Framework. There does not seem to have been a similar attempt to analytically level the playing

field vis a vis implementation costs, however, as no indexing or calibration has been undertaken to account for the cumulative costs of efforts to date (see also Q. 4-3), cost equivalency data is rooted in experience outside California, and simple average costs are used to represent widely variable ranges. How would the CTR cost/benefit relationship be affected by adjusting for California's significant previous efforts on water quality control mechanisms and California cost data?

Response to: CTR-092-022b

See responses to CTR-032-004, CTR-060-019, CTR-004-003, CTR-035-048, and CTR-092-022a.

Subject Matter Code: E-01c Executive Order 12866

Comment ID: CTR-021-005c
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES C-13
C-28
R
S

Comment: It is with a sense of reluctance that Sunnyvale joins in CASA/Tri-TAC's adverse comments on the CTR and the EA, and Sunnyvale does so in a spirit of constructive criticism and with an expectation that the Agency will make the necessary adjustments in its approach towards the CTR before the final rule is promulgated. In addition, in the same spirit and with the same expectation, Sunnyvale would like to make the following points on its own behalf:

2. Obligation to Assess Alternative Cancer Risk Levels for Human Health-Based Criteria. Sunnyvale is gravely concerned that EPA has used the wrong approach in proposing to establish human health criteria for organic pollutants, particularly those pollutants for which the proposed criteria are below the method level of detection ("MDL"). Sunnyvale recommends that EPA should thoroughly assess all of the potential impacts, including costs and benefits, of the 10E-4 and 10E-5 risk levels before proposing the human health-based criteria. As pointed out in the EOA Letter, there is a significant potential for advancing technology to lower the MDL for many pollutants to the point where laboratory equipment is able to measure some or all of the organic compounds for which EPA is proposing to establish criteria at the new level. It is intuitively obvious that the costs of attaining criteria set at the 10E-6 level will be significantly greater than attainment of a 10E-5 or 10E-4 level, particularly where, as pointed out in the EOA Letter, the only available method of treatment is granular activated carbon. Sunnyvale is concerned that the EA does not adequately address the potential for these costs, and, consequently, does not take these potential costs into account in determining whether to exercise its flexibility in choosing whether to use a 10-4 , 10-5 or 10-6 cancer risk level as the basis for its CTR promulgation.

EPA is required by Executive Order 12866, the Regulatory Flexibility Act and the Unfunded Mandates Reform Act to identify and analyze alternatives to a proposed rule. We cannot understand, therefore, why EPA has done such a cursory analysis in the preamble to the CTR and the EA of the alternatives to the use of the most stringent (10E-6) risk level for establishing criteria for human health effects of pollutants, particularly organic pollutants. EPA cannot base its selection of the 10E-6 level based upon previous regulatory pronouncements by the State of California. Any new determination by the State will be subject to the analytical requirements of Section 13241 of the Porter-Cologne Act and by review by the Office of Administrative Law. Thus, it is not a foregone conclusion that the State will ultimately select the 10E-6 level. EPA has its own legal requirements to fulfill. Accordingly, we ask that EPA not promulgate the final human health criteria for the pollutants of concern unless and until it has adequately analyzed the costs and other implications of the various alternatives to the 10E-6 level.

In conclusion, we are entirely supportive of many of EPA's innovative approaches towards development of the CTR, particularly as regards the toxic metals. However, we believe that EPA has needlesly failed to comply with many of its legal obligations, particularly as regards the development of human health-based criteria on cancer risk levels of organic pollutants. We urge the Agency to reconsider its position in the matters covered by this letter (as amplified by the EOA Letter) and the CASA/Tri-TAC letter. Sunnyvale pledges its continued participation in place-based watershed management planning in the South Bay, its cooperation with the Agency in making a success of the WPI, and to an ongoing effort by the Agency and others to reach water qulaity goals in the South Bay. We thank you for the opportunity to comment on the proposed CTR.

Response to: CTR-021-005c

With respect to the Regulatory Flexibility Act (RFA), and as stated in the preamble to the proposed and final rules, the RFA requires agencies to assess the economic impact of a rule only on small entities that are subject to the requirements of the rule. Today's rule does not impose any impacts on small entities.

Under the CWA, states have the primary responsibility for implementing water quality standards. [See e.g., Scott v. City of Hammond, Ind., 741 F.2d 992, 994 (7th Cir. 1984).] Unlike technology-based effluent limitations guidelines which are required to be implemented into NPDES permits, 40 CFR 122. 44(a), and for which EPA conducts regulatory flexibility analyses if the RFA standard is met, states have considerable discretion in developing effluent limits for point sources as necessary to meet water quality standards.

Water quality standards consist of three elements: designated uses, which establish water quality goals for water bodies in the State (which may take into account economic considerations), water quality criteria sufficient to protect those uses (based on science without regard to cost), and an antidegradation policy to maintain water quality. 40 CFR 131.6. Water quality criteria are ambient levels or concentrations or narrative statements representing conditions necessary to protect a designated use. 40 CFR 131.3(b). Once EPA establishes water quality criteria, the end to be achieved, the State has considerable flexibility in determining the means to achieve those ends in NPDES permits, TMDLs and other water quality programs. This flexibility means that while the State's implementation of federally-promulgated water quality criteria may result in new or revised discharge limits being placed on small entities, the criteria themselves apply to water bodies, not to any dischargers, including small entities.

In issuing a permit limit, there are various mechanisms a state may use including: mixing zones, pollutant loading allocations, effluent trading, and water-effect ratios. The State also has the ability to adopt variances, designated use reclassification, and site-specific criteria if appropriate and necessary. Each of these authorities may be applied by the State when it issues an NPDES permit. In addition, the State may have authority to control water quality in other ways independent of the CWA NPDES program, such as establishing controls over non-point sources, water quantity, zoning, best management practices (such as tree planting to lower temperature and runoff or fish ladders to improve fish spawning). These mechanisms, if successful, may affect the need for or substance of a water-quality based effluent limit. Thus, because it is the State that issues the permit and because the State in implementing the criteria may apply any or all of the above authorities, these criteria alone, in and of themselves, do not impact any small entity.

Consistent with this statutorily-mandated division of responsibilities between the states and the federal government under the CWA, EPA in the CTR has set state-wide ambient criteria for toxic pollutants, but has left to the State the primary responsibility for determining how to regulate point source dischargers

and non-point source dischargers tomeet the standards. Thus, EPA's certification of the CTR under section 605(b) of the RFA is consistent with (and a direct consequence of) the design of the CWA.

Further, attempting to apply the RFA analysis to water quality criteria setting does not make sense. Most importantly, this is because water quality criteria apply to the waterbody and must protect the designated use. As such, tailoring water quality criteria to vary depending on the size of a discharging entity is not possible. See Response to Comment CTR 042-007a. Also, because water quality criteria do not apply to small entities, and because states are free to adopt whatever mix of control measures they deem necessary, it is unclear to what extent states will seek discharge reductions from small entities. Finally, the water quality criteria themselves contain no regulatory or informational requirements applicable to small entities and thus cannot be tailored to fit the scale of those entities.

EPA recognizes that it has undertaken an economic analysis pursuant to E.O. 12866 for this rule. This analysis, however, makes numerous assumptions and does not necessarily predict how the state will implement the criteria. Thus, the economic analysis represents EPA's best estimate of the costs of the rule and given the broad flexibility the state has in implementing the criteria, the costs may even be lower. In addition to this analysis, EPA did an analysis of state and local implementation procedures that may have an impact on NPDES permit holders and indirect dischargers, entitled Implementation Analysis of Ambient Water Quality Criteria for Priority Toxic Pollutants in California. These analyses constitute an analysis equivalent to a regulatory flexibility analysis.

EPA believes that CTR criteria by themselves do not directly impose economic impacts. As a result, EPA believes that the rule is not significant within the meaning of Executive Order 12866. Criteria are one of three parts of a water quality standard. A water quality standard is comprised of: a criterion, a designated use, and an antidegradation requirement. The CTR promulgates criteria for priority toxic pollutants. When these criteria are combined with State adopted designated uses and antidegradation requirements, water quality standards will be created. When the State implements these water quality standards, costs may be imposed based on many yet unknown factors including the community's decision that such costs are reasonable and appropriate to protect designated uses. Nevertheless, in the spirit of the intent of E.O. 12866, EPA prepared the EA which looks at the potential costs and benefits of the State's implementation of the resulting water quality standards based on the CTR criteria into the NPDES permit program.

EPA disagrees with the commenter's assertion that EPA may not have complied with Executive Order 12866. EPA fully complied with Section 6(a)(3)(a) of the Executive Order which requires each agency to provide OMB with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions.

EPA categorized the CTR as "not significant" and submitted to OMB, a draft copy of the proposed CTR along with a draft economic analysis. After review of this material, OMB agreed with EPA's determination that the proposed rule was not significant within the meaning of the Executive Order, and waived its 90-day review period for the proposed CTR. EPA performed an economic analysis even though this type of analysis is only required for significant regulatory actions within the scope of section (3)(f)(1) of the Executive Order. Therefore, even though EPA categorized the proposed CTR as "not significant", EPA fulfilled the Executive Order requirements as if it were a significant rule.

For further discussion of how today's rule complies with Executive Order 12866, the Unfunded Mandates Act, and the Regulatory Flexibility Act, see the preamble to the final rule and EPA's economic analysis of the final rule.

Comment ID: CTR-021-006b
Comment Author: LeBoeuf, Lamb, Green & MacRae
Document Type: Local Government
State of Origin: CA
Represented Org: City of Sunnyvale
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-021 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES J
R
S
I-01

Comment: It is with a sense of reluctance that Sunnyvale joins in CASA/Tri-TAC's adverse comments on the CTR and the EA, and Sunnyvale does so in a spirit of constructive criticism and with an expectation that the Agency will make the necessary adjustments in its approach towards the CTR before the final rule is promulgated. In addition, in the same spirit and with the same expectation, Sunnyvale would like to make the following points on its own behalf:

3. Failure to Address Important Stormwater-Related Issues. In addition to its POTW, Sunnyvale is the owner of a system of storm drains which contribute wet weather flows to the South Bay. We are concerned that the EA entirely neglects the potential impacts of the proposed CTR on the storm drains. The EA entirely omits any meaningful analysis of the costs of bringing storm drains into compliance with the proposed CTR, thereby significantly understating the overall costs of the CTR. We believe that this omission is violative of the Agency's legal obligations under the authorities cited in the preceding paragraph.

In addition, we join in the comments being filed by the various other operators of stormwater collection systems to the effect that EPA has overstated the legal requirements for storm drains to comply with numerical criteria.

Response to: CTR-021-006b

EPA did not include benefits or costs of controlling nonpoint sources or storm water dischargers in its estimates of benefits and costs of the CTR. EPA believes that the final rule will not have a direct effect on sources not permitted under the NPDES program (e.g., nonpoint sources) or NPDES sources not typically subject to numeric water quality-based effluent limits (e.g., wet weather discharges) beyond those already being implemented under current state programs. The CTR language allows (consistent with EPA's policy) the practice of applying maximum extent practicable (MEP) to MS4 permits, along with BMPs as effluent limits to meet water quality standards where infeasible or insufficient information exists to develop water quality-based effluent limits. Any potential indirect effect on nonpoint sources and wet weather discharges, such as runoff from farms, urban areas, and abandoned mines, and contaminated sediment, is unknown at this time. Many of the programs developed to control nonpoint sources and wet weather discharges are already in place in the State of California. Costs due to these programs have already been incurred or will soon be incurred owing to existing federal, State, and local environmental programs. EPA evaluated the comments and analyses submitted by commenters providing costs for controlling nonpoint sources and none of these comments provided a definitive argument that

storm water dischargers cannot achieve compliance with the proposed water quality criteria or that compliance would result in widespread economic impact or hardship.

EPA also acknowledges that nonpoint sources and wet weather discharges are technically difficult to model and evaluate costs because they are intermittent and highly variable. Nonpoint source and wet weather discharges also occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, evaluating agricultural nonpoint source discharges and storm water discharges and their effects on the environment is highly site-specific and data intensive.

See also response to CTR-040-004.

Comment ID: CTR-031-006c
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-031 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES J
R

Comment: b. If the CTR as proposed in the current draft is applied to municipal storm water dischargers so as to require numeric effluent limitations in municipal stormwater permits, the cost to the public will be phenomenal. In the economic analysis of the CTR, EPA failed to consider these costs, and failed to consider the costs to industrial storm water dischargers as well.

The District Is urban storm water drainage system captures through retention 90% of its annual average runoff, and discharges 90% after detention (1% is directly discharged without treatment). The system cost in 1997 dollars is estimated at $500 million.

The only option available to the District to mitigate violations of the proposed criteria would be to expand system storage to capture 100% of average annual runoff. Increasing system storage by 20,000 acre feet (estimated additional storage required for average years), at the current cost of $11,000-$20,00 per acre foot of storage, would result in a capital expenditure of $220,000,000 to $400,000,000.

Even with this exorbitant investment, in approximately half of the rain seasons storage would be exceeded, and 100% of the discharges would be expected to exceed the dissolved metals criteria noted above.

Smaller cities (under 50,000) in California are currently subject to NPDES municipal storm water discharge permits, and many more will be included upon implementation of the Stormwater Phase II program. EPA's failure to assess economic impacts on small cities would appear to be contrary to the requirements of the Federal Regulatory Flexibility Act.

The District includes in its constituency industrial businesses. The District serves these businesses and

assists in the oversight of their pollution prevention and storm water permit compliance efforts. Regardless of EPA' s approach to applying the CTR to municipal storm water permits, industrial storm water dischargers are directly and seriously affected by application of the CTR. EPA's failure to assess these economic impacts on our communities is short-sighted and a breach of good public policy.

Response to: CTR-031-006c

See responses to CTR-021-006b and CTR-040-026. For discussion of the applicability of the Regulatory Flexibility Act to this rule, see the preamble to the final rule.

Comment ID: CTR-035-008f
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES E-01g08
E-01e
E-01d
E-01m
E-01h

Comment: Finally, we have serious concerns about the accuracy of the draft Economic Analysis and the estimates of the costs and benefits of the draft CTR (see detailed comments in Attachments I and 2). Our primary concerns related to the cost analysis include 1) that the case studies on which the cost analysis is based do not adequately represent the actual population of POTWs in California; 2) the omission of costs that could be incurred by many sectors that contribute to overall loadings, and, hence, can be expected to have to reduce their loadings (e.g., non-SIU indirect dischargers, municipal and industrial stormwater dischargers, agricultural activities, and other nonpoint sources of CTR-regulated pollutants); 3) the use of numerous assumptions that underestimate costs; and 4) the capricious removal of costs that exceed threshold values by assuming that regulatory relief measures will be granted, despite the lack of any proposed regulatory relief trigger in the proposed regulation.

To illustrate the degree of underestimation of costs for the POTW sector alone, we looked at potential compliance costs for the POTW sector. We found that the potential costs for 23 major POTWS. on an annualized basis, may reach $400 million. We believe that this analysis demonstrates that the potential cost consequences of compliance with effluent limits based on the proposed CTR criteria would easily exceed the $ 100 million annual cost threshold, especially when the costs of all 313 POTWs in the State are estimated. Thus, we believe that EPA must conclude that the proposed CTR could have significant economic impacts on local governments.

Response to: CTR-035-008f

See response to CTR-021-005c, CTR-032-004, CTR-040-039, CTR-021-006b, CTR-040-037, and CTR-059-018.

Comment ID: CTR-035-010
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES

Comment: In summary, we believe that, contrary to EPA's conclusion, the proposed regulation is a significant regulatory action pursuant to Executive Order 12866 and the Unfunded Mandates Reform Act. The CTR may well impose costs that exceed $100 million per year on the regulated community, the majority of which are local public agencies, and this will have a significant impact on local governments. By another measure, by promulgating 190 new criteria for California (for about 70 different pollutants), of which 70 (37%) have been recalculated, modified, or added by EPA since the 1992 promulgation of the National Toxics Rule, the CTR certainly is a "significant regulatory action,"(*1) Further, the Agency fails to make a "reasoned determination that the benefits of the intended regulation justify its costs," as required by Executive Order 12866 or a determination that the Agency selected "the least costly, most cost-effective or least burdensome alternative" as required under the Unfunded Mandates Reform Act. Hence, in our estimation, EPA must completely overhaul the Economic Analysis, and it must be reviewed by the Office of Management and Budget because the CTR is a significant regulatory action.

(*1) These numbers include aquatic life and human health criteria that were promulgated for California in the 1992 NTR but which have been modified or recalculated and are being reproposed in the CTR.

Response to: CTR-035-010

See response to CTR-021-005c.

For a discussion of the Agency's compliance with UMRA and Executive Order (EO) 12866, see the preamble to the final rule. Although EPA was not required to conduct a regulatory impact assessment, EPA chose to conduct one. EPA believes that its analysis has shown that the benefits of the rule justify the costs. However, under the Clean Water Act, water quality criteria are not established based on costs but are based on sound science to protect designated uses of the waters. Further, such criteria are to be based on EPA's section 304(a) criteria recommendations, EPA's 304(a) criteria recommendations modified to reflect site-specific conditions, or other scientifically defensible methods. From the outset of the national water quality standards program, EPA has explained that while economic factors may be considered in designating uses, scientific and technical factors must justify criteria to meet those uses. Also see response to CTR-042-007a.

Comment ID: CTR-035-039
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA

Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES

Comment: II. Compliance with Federal Executive Orders and Statutes pp. 42188-42190 -- Executive Order 12866, Regulatory Planning and Review EPA claims that it is not subject to certain requirements of the Executive Order because the Administrator has determined that the CTR is not a "significant regulatory action" within the meaning of Section 3(f)(1) of the E.O. We believe that EPA was incorrect in making this determination, for the following reasons: (1) the annual costs of the CTR will be far in excess of the $ 100 million threshold (see additional discussion below); (2) the CTR will without question materially adversely affect state and local governments; and (3) the CTR is likely to have a material adverse effect on one or more sectors of the economy, with a prime example being Silicon Valley, the heart of America's high technology industry, which happens to be located around the southern portion of San Francisco Bay. EPA itself identifies three sectors that will bear most of the projected costs of implementing the proposed rule. POTWs, chemical and petroleum industries, and metals and transportation equipment (collectively, these three sectors represent 93% and 97% of the annual costs under the low and high cost scenarios, respectively) (U.S. EPA, 1997b, pp. 3-3 and 3-7). We also believe that the proposed CTR is significantly different from rules that have been promulgated previously, including the National Toxics Rule ("NTR") (40 CFR 131.36) and the Great Lakes Initiative ("GLI") (60 Fed. Reg. 15366). While both of these previous rules promulgated water quality criteria for toxic pollutants, many of the criteria included in the CTR have been recalculated since the NTR was -promulgated in 1992 (70, or 37%, have been modified, recalculated, or added), the GLI served a somewhat different purpose than does the CTR (i.e. compliance with the Great Lakes Critical Programs Act of 1990), and, most importantly, those rules did not apply to California.(*2) Therefore, the economic analyses for those rules did not include an analysis of the economic impacts on California.

We believe that EPA also failed to fulfill its obligations under E.O. 12866, as follows: EPA did not seriously explore available regulatory alternatives, including the option of not regulating; EPA did not make a "reasoned determination that the benefits of the intended regulation justify its costs;" and EPA did not take into account the cost of cumulative regulations. In particular, we believe that for pollutants where the criteria are below commonly found laboratory detection levels, EPA did not fulfill its obligation to analyze the potential costs and benefits of the promulgation of these criteria. Because of this lack of compliance with the requirements of E.O. 12866, EPA should select the alternative of not regulating them at this time. As our ability to detect specific chemicals improves, then EPA may proceed with promulgation, provided all legal responsibilities are met. For all of the above-stated reasons, we believe that EPA must revise the CTR, and its economic analysis of the CTR, to comply with E.O. 12866.

(*2) With the exception of the NTR, which partially applied to California. However, the proposed CTR by definition does not duplicate the criteria in the NTR which already apply to California, unless revised criteria are being proposed.

Response to: CTR-035-039

Executive Order (EO) 12866 does not negate the Clean Water Act requirement that States have numeric

criteria for toxic pollutants for which EPA has issued 304(a) guidance. Within EO 12866 there are caveats to the application of the EO including section 1(a): "unless a statute requires another regulatory approach," and section 1(b): "to the extent permitted by law and where applicable."

See responses to CTR-021-005c and CTR-042-007a and the preamble to the final rule for discussions relating to the rule's compliance with EO 12866.

Comment ID: CTR-036-002b
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES J

Comment: Cost to Implement the Proposed Rule

The inclusion of municipal stormwater discharges under the proposed rule renders the economic analysis invalid, noting municipal studies that show that stormwater discharges cannot comply with all of the proposed criteria with anything short of major national or regional product substitutions, or end-of-pipe treatment:

The Fresno Metropolitan Flood Control District conducted an attainability analysis on stormwater discharges from its urbanized area detention basins. The analysis showed that even with pollutant reductions in the basins, the proposed criteria would not be met.

The Sacramento Stormwater Program conducted an attainability analysis and found that even with an aggressive BMP program the urbanized area would not achieve certain of the water quality criteria, and that the cost of treatment would be on the order of $2 billion.

A preliminary attainability analysis conducted by Orange County, based on a limited dataset, indicates similar findings to Fresno and Sacramento in spite of the implementation of a significant BMP program over a multi-year period (see Attachment 2).

A nationwide attainability study, conducted by American Public Works Association in 1992, estimated capital costs and annual operations costs to be $406,734,900,000 and $542,036,700,000. Significantly, these estimates omitted the costs associated with engineering, administration, permitting and land acquisition.

Even if end-of-pipe treatment were to be implemented for all urban stormwater, the contribution of toxic pollutants from this source is so minor (less than 3% according to the economic analysis) that they could not be justified by the marginal water quality benefits achieved. Clearly a rule that is known from the outset to inevitably result in massive expenditures which provide little water quality benefit or inevitable municipal noncompliance is not appropriate for California.

The rulemaking process of the federal government is obligated to fully explore the economic implications of the proposed regulatory action through compliance with Executive Order 12866, the Unfunded Mandates Report Act, of 1995 (the "Reform Act"), and the Regulatory Flexibility Act (the "RFA"). In its economic analysis EPA appears to have understated costs and circumvented these requirements resulting in a lack of disclosure of the true impacts of the Rule.

Executive Order 12866 requires any "significant" federal regulatory action to be referred to the Office of Management and Budget for review before it can be approved. In this context a "significant" action includes one which will "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy". Though admitting that there "may be a cost to some dischargers" to comply with water quality standards which will be derived from these toxics criteria, EPA nonetheless argues that the proposed rule is not a significant action because it "establishes ambient water quality criteria which. by themselves, do not directly impose economic impacts." [62 Fed. Reg. 42188].

First nothing in E.O. 12866 indicates that only actions with direct economic impacts are to be considered by OMB. Second, for EPA to ignore the link between the toxics criteria contained in the proposed rule and the obligations they impose is unfounded.

In short, EPA cannot have it both ways. It cannot indicate that stormwater discharges are subject to the proposed toxics rule and then turn a blind eye toward the costs associated with implementation of this rule. The costs of the proposed rule are direct and significant, greatly exceeding the annual $100 million threshold, and therefore the rule must be submitted to OMB for review.

Response to: CTR-036-002b

See response to CTR-021-005c, CTR- 021-006b and preamble to the final rule.

Comment ID: CTR-038-005a
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES R
S

Comment: A further consequence of the flawed economic analysis is the conclusion that the CTR is not a major rule (i.e., one which will result in excess of $100 million per year expenditure) subject to Presidential Executive order 12866 and the Unfunded Mandates Reform Act or a rule that affects small entities protected under the Regulatory Reform Act. The District, for example, is a small community having a population of under 50,000 and, in addition, serves several small towns and communities (Sonoma, Glen Ellen, Boyes Hot Springs and Agua Caliente) that would be greatly impacted by the proposed rule.

Response to: CTR-038-005a

See response to CTR-021-005c.

Comment ID: CTR-038-006b
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-21
R
S

Comment: 5. The proposed rule is inconsistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, and recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters, "states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use" (See 40 CFR 131.11(a)(2)). Clearly the intent of both the Clean Water Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. Moreover, in failing to properly consider the impacts on small entities, such as the District and the small communities it serves, the rule is inconsistent with the Regulatory Flexibility Act.

Response to: CTR-038-006b

See responses to CTR-021-005c, CTR-036-005, and the preamble to the final rule.

Comment ID: CTR-038-008b
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-24

R
S
T

Comment: 7. Separate, sites-specific aquatic life criteria for copper and human health criteria for mercury should be adopted for Schell Slough, or alternatively EPA should specify implementation procedures for these criteria that will preclude unreasonable controls such as end-of-pipe treatment. To comply with the Clean Water Act and EPA regulations, EPA should consider specific water bodies. To fulfill the spirit of Presidential Executive Order 12866 and the requirements of the Unfunded Mandates Reform Act and the Regulatory Flexibility Act, EPA should evaluate regulatory alternatives based on an analysis of costs and benefits. Based on the assessment of costs and benefits described in "3" above, EPA should either adopt the criteria that is currently achieved, or alternatively specify implementation procedures that would allow the current discharge to continue (e.g., allowable Mixing zones and averaging periods and, for copper, a translator and water-effect ratio). Again, the District is amenable to continuing to address these constituents through pollution prevention measures and to assessing the actual impacts of these constituents in Schell Slough. Without EPA specifying such implementation procedures in the CTR, it is possible that the CTR could impose significant costs on the District (and the other small communities its serves) without providing a commensurate environmental benefit. In that case, the CTR would be inconsistent with the Clean Water Act, EPA regulations, Presidential Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act.

Response to: CTR-038-008b

See response to CTR-021-005c, the preamble of the final rule.

Comment ID: CTR-040-009c
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES R
S

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

II. Concern: The economic analysis upon which the Rule is based is seriously flawed.

* A consequence of the cost/benefit analysis of the Rule are several erroneous conclusions, namely that: (1) this is not a "significant regulatory action" or a major rule (i.e., one which will result in excess of

$100 million annual expenditure) subject to the requirements contained in Presidential Executive Order 12866 and the Unfunded Mandates Reform Act; and (2) this is not a rule that will have a significant economic impact on a substantial number of small entities protected under the Regulatory Flexibility Act.

Response to: CTR-040-009c

See response to CTR-021-005c.

Comment ID: CTR-040-012a
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES S

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

III. Concern: The proposed Rule violates applicable Federal law and regulations

* In failing to properly evaluate the Rule's impacts and in failing to adequately consider regulatory alternatives, the Rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (See Attachment B).

Response to: CTR-040-012a

See response to CTR-021-005c.

Comment ID: CTR-041-013a
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES R
S

Comment: 8. The proposed Rule is Inconsistent with Applicable Federal Law and Regulations

The proposed rule is inconsistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. (See attached Legal Analysis of the Proposed California Toxics Rule) to properly evaluate the rule's economic impacts and in failing to adequately consider alternative criteria for San Francisco Bay Area waters, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (Id). In failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act (Id).

Thank you for the opportunity to provide comments on this important new rule. Please call if you have any questions regarding our letter.

Response to: CTR-041-013a

See responses to CTR-021-005c and CTR-036-005.

Comment ID: CTR-041-015
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES

Comment: 2. The California Toxics Rule is inconsistent with Executive Order 12866 and the Unfunded Mandates Reform Act.

a. Executive Order 12866

Executive Order (E.O.) No. 12866 was decreed by President Clinton on September 30, 1993. This Order governs review of agency regulations and sets standards that federal agencies should use in planning, drafting, and reviewing regulations. E.O. 12866 requires agencies to:

- Assess all of the costs and benefits of available regulatory alternative, including the alternative of not regulating;

- Propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs;

- specify performance objectives, rather than specify the behavior or manner of compliance, to the extent feasible;

- Tailor its regulations to impose the least burden on society, taking into account, among other things,

the cost of cumulative regulations;

- Afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment Period of not less than 60 days;

- Explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

EPA contends that the CTR is not a "significant regulatory action" requiring an economic analysis under the terms of E.O. 12866.(*3) This contention by EPA is erroneous since BADA's attainability analysis shows that the cost to BADA alone may exceed the $100 million cut-off for determining whether a rule is a "significant regulatory action."

Furthermore, the standard for becoming a "significant-regulatory action" is, among other things, that the proposed rule is likely to have annual effect on the economy of $ 100 million or more, OR adversely affect in a material way the economy, the environment, or local governments. Thus, EPA should not be able to allege that this is not a "significant regulatory action" because the CTR will be likely to adversely affect the economy and local governments even if the $100 million cut-off were not met.

Moreover, EPA failed to seriously explore available regulatory alternatives, including an option of not regulating; did not make a "reasoned determination that the benefits of the intended regulation justify its costs;" did not allow a 60-day comment period; and did not seriously take into account the cost of cumulative regulations.

(*3) See 62 Fed. Reg. 42,188 (Aug, 5,1997)("It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order (E.O.) 12866 and is therefore not subject to OMB review").

Response to: CTR-041-015

See responses to CTR-021-005c, CTR-001-001, and CTR-035-001.

Comment ID: CTR-042-007b
Comment Author: Cal. Dept. of Transportation
Document Type: State Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-21
S

Comment: 7. The CTR may violate the Administrative Procedures Act, the and Unfunded Mandates Reform Act (UMRA) Executive Order (E.O.) No. 12866.

In the Preamble to the CTR, EPA repeatedly claims that the CTR will not result in expenditures of more than $100 million per year and, therefore, the statutory requirements of the UMRA and E.O. 12866 are not triggered.(*1) Caltrans' annual costs alone and only in Los Angeles will exceed the $100 million annual figure, even assuming the lowest level of treatment. Therefore, EPA's cost assumptions are challengeable as being arbitrary and capricious and in violation of the Administrative Procedures Act.(*2)

Request: Caltrans requests that EPA reconsider its cost estimates based on the comments received during the public comment period.

Caltrans would like to thank EPA for the opportunity to provide comments on this proposed regulation. It is hoped that EPA will consider and address Caltrans' comments in the final version of the CTR. Should you have any questions concerning our comments on the CTR, please feel free to address these questions to Marcia Arrant at (916) 657-5381.

(*1) See CTR, 62 Fed. Reg. at 42,188, and at 42,191 ("EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.")

(*2) See American Iron and Steel Institute v. EPA, 1997 WL 297251 (D.C. Cir., 1997)(the court found that EPA had arbitrarily failed to adequately address cost-justification for its elimination of mixing zones. EPA had estimated the total cost of elimination mixing zones for bioaccumulative chemicals of concern (BCCS) from all dischargers to the Great Lakes at $200,000, without even acknowledging a comment estimating the cost to one town for removal of mercury from its sewage discharge would be approximately $300,000).

Response to: CTR-042-007b

With respect to the commenter's criticism of the GLI decision, see CTR-042-007a. See CTR-021-005c for an explanation of how the Economic Analysis for the final CTR complies with EO 12866 and UMRA.

Cost estimates provided in the California Department of Transportation (Caltrans) analysis of compliance with the CTR may mix best management practices (BMPs) implementation costs to comply with local storm water permits with new compliance costs resulting from the CTR. EPA's Economic Analysis only evaluates the incremental impact of the water quality standards for toxics compared to the baseline program to avoid a double counting of costs (and benefits). For a detailed discussion of Caltrans' comments, see CTR-040-004.

Comment ID: CTR-043-005b
Comment Author: City of Vacaville
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:

Attachments? Y
CROSS REFERENCES C-21
R
S

Comment: 5. The proposed rule is inconsistent with applicable Federal law and regulations.

In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters,"states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use"(See 40 CFR 131.1 I (a)(2)). Clearly the intent of both the Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. Moreover, in failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act.

Response to: CTR-043-005b

See responses to CTR-021-005c and CTR-036-005, and the preamble to the final rule.

Comment ID: CTR-044-006b
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-21
R
S

Comment: We have reviewed the proposed CTR and offer the following comments:

5. The proposed rule is inconsistent with applicable Federal law and regulations.

In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where

toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters, "states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use"(See 40 CFR 131.11 (a)(2)) (see Exhibit G). Clearly the intent of both the Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (Id.). Moreover, in failing to properly consider the impacts on small entities, such as the City, the rule is inconsistent with the Regulatory Flexibility Act (Id.).

Response to: CTR-044-006b

See responses to CTR-021-005c, CTR-036-005, and the preamble to the final rule.

The NOAA data included five bays (San Diego, Humboldt, Monterey, Santa Monica, and San Pedro), two of which are actually covered by the CTR (San Diego and Humboldt). EPA assumed that the data for the nonenclosed bays generally will be applicable to enclosed bays. If EPA had excluded those bays not covered by the rule, the attribution assumption for point sources would actually be higher (see EA, Chapter 7). For example, for urban bays, the toxic-weighted average contribution of point sources is higher for the enclosed bay covered by the rule (San Diego Bay; 91%) compared to the nonenclosed bays (Santa Monica and San Pedro, at 88% and 83%, respectively). EPA employed toxicity-weighting to estimate relative source contribution because the toxicity of the discharge, more than volume, will influence its impact on receiving waters. The California 1996 303(d) report lists both point and nonpoint sources as probable sources of pollution for Santa Monica Bay. The list of pollutants and stressors for Santa Monica Bay includes metals, DDT, and PCBs.

Comment ID: CTR-044-009b
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-28
R
S

Comment: We have reviewed the proposed CTR and offer the following comments:

8. EPA should not adopt criteria for any pollutant where the method detection limit exceeds the objective and there is insufficient detectable, reliable data to determine if the pollutant could reasonably be expected to interfere with designated uses. The proposed rule includes criteria for a number of constituents where there is insufficient data to determine whether the discharge of such pollutants could reasonably be expected to interfere with the designated uses. EPA has chosen to promulgate criteria for these constituents even though section 303 (c)(2)(B) of the Clean Water Act requires States to adopt numeric criteria only for constituents "... the discharge or presence of which in the affected waters could

reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." Clearly, this approach goes beyond the requirements of the Clean Water Act and is therefore unnecessary. Additionally, this approach does not allow EPA to fulfill its duty (under Presidential Order 12866, the Unfunded Mandates Reform Act, and the Regulatory Flexibility Act) to assess the costs, benefits, and impacts of the rule on local government and small entities. While this may be the conservative approach for EPA, it places dischargers throughout the State at risk. As analytical detection limits improve, dischargers may find they are unable to achieve the criteria without costly end-of-pipe controls. But, by then, it will be too late for EPA to evaluate the costs and benefits of the criteria-and-consider alternative criteria. For these reasons, EPA should not adopt criteria for those constituents. If EPA does adopt criteria for those constituents, EPA should evaluate the costs and benefits of toxic criteria, as well as alternative criteria, using worst case assumptions (i.e., assume that discharge levels and ambient levels are at the detection limits).

Response to: CTR-044-009b

See responses CTR-044-033, CTR-021-005c, CTR-004-002, CTR-005-009, and CTR-035-064.

EPA defined toxic-impaired waters as waters rated medium or poor quality for at least one or more toxic pollutant or group of pollutants. EPA acknowledged that this definition may result in an overestimate of toxic-impairment (EA Chapter 8). However, the rating of these waters corresponds to EPA's categories of 'not fully supporting' and 'partially supporting' designated uses. The existence of waters not supporting and only partially supporting designated uses is indicative of the need for and benefits associated with pollution controls.

Comment ID: CTR-044-045
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES B Comment Period

Comment: 2. The California Toxics Rule is inconsistent with Executive Order 12866 and the Unfunded Mandates Reform Act.

a. Executive Order 12866

Executive Order (E.O.) No. 12866 was decreed by President Clinton on September 30, 1993. This Order governs review of agency regulations and sets standards, that federal agencies should use in planning, drafting, and reviewing regulations. E.O. 12866 requires agencies to:

- Assess all of the costs and benefits of available regulatory alternatives, including the alternative of not regulating;

- Propose or adopt a regulation only upon a reasoned determination that the benefits of the intended

regulation justify its costs;

- Specify performance objectives, rather than specify the behavior or manner of compliance, to the extent feasible;

- Tailor its regulations to impose the least burden on society, taking into account, among other things, the cost of cumulative regulations;

- Afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days;

- Explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

EPA contends that the CTR is not a "significant regulatory action" requiring an economic analysis under the terms of E.O. 12866. This contention by EPA is erroneous since the standard for becoming a "significant-regulatory action" is that the proposed rule is likely to have annual effect on the economy of $100 million or more, OR adversely affect in a material way the economy, the environment, or local governments. Thus, EPA should not be able to allege that this is not a "significant regulatory action" because the CTR will be likely to adversely affect the economy and local governments even if the $100 million cut-off were not met.

Moreover, EPA failed to seriously explore available regulatory alternatives, including an option of not regulating; did not make a "reasoned determination that the benefits of the intended regulation justify its costs;" did not allow a 60-day comment periods, and did not seriously take into account the cost of cumulative regulations.

Response to: CTR-044-045

See responses to CTR-021-005c and the preamble to the final rule.

Comment ID: CTR-045-012b
Comment Author: Sausalito-Marin Sanitary Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES E-01d

Comment: Based on our analysis of the impact of the proposed CTR, we will need to utilize reverse osmosis to meet the proposed CTR limits for copper. Based on this modification, we estimate that our potential annualized costs for compliance will be approximately $900,000. These costs are significantly higher than EPA's estimated costs per plant of $27,000 per year to $480,000 per year. Thus, we strongly believe that the draft Economic Analysis significantly underestimates the potential statewide costs associated with adoption of the CTR and should be revised.

Response to: CTR-045-012b

EPA received a number of comments regarding the ability of existing treatment technologies to meet CTR-based WQBELs for a wide variety of pollutants. The CTR, consistent with the Clean Water Act (CWA) and the National Pollutant Discharge Elimination System (NPDES) program, does not direct facilities on how to comply with permit requirements. Therefore, each regulated facility can consider a variety of options to comply with permit requirements. In estimating compliance costs, EPA selected control options for the sample facilities by taking into consideration treatment feasibility and cost.

In an effort to ensure consistency in estimating the general types of controls that would be necessary for a sample facility to comply with the final CTR, as well as to integrate into the cost analysis the alternatives available through CWA and NPDES permit programs, EPA developed and utilized a decision matrix. The underlying assumption of the decision matrix is that a facility will examine least-cost alternatives prior to incurring the expense and potential liabilities associated with constructing end-of-pipe treatment facilities. Additionally, for the low scenario only, EPA assumes that where current treatability data indicate that end-of-pipe treatment cannot achieve the WQBEL, a regulatory alternative measure, such as phased total maximum daily loads/water quality assessments, site-specific criteria modifications, standards variances, etc., will be utilized.

Under the decision matrix, EPA considered costs for minor treatment plant operation and facility changes first. Where it was not technically feasible to simply adjust existing operations, waste minimization/pollution prevention controls were considered; however, these controls were selected only where they were considered feasible based on EPA's understanding of the processes at a facility. In general, detailed treatment and manufacturing process information is not available in NPDES permit files. Therefore, EPA's assessment of feasibility was primarily based upon best professional judgement using general knowledge of industrial and municipal operations. If waste minimization was deemed not feasible to reduce pollutant levels to those needed to comply with the final Guidance criteria, EPA considered a combination of waste minimization/pollution prevention and simple treatment. If these relatively low-cost controls could not achieve the CTR-based WQBELs, then, finally, EPA assigned costs for end-of-pipe treatment.

It should be noted that under the low scenario, EPA provided one additional cost assumption. Before assuming that treatment would be installed by the facility, EPA first considered whether or not the treatment had been shown to achieve the requisite effluent concentration, and evaluated the relationship between the cost of adding the treatment versus other types of remedies or controls. If EPA concluded that treatment was not technically feasible, or that other remedies or controls would be more feasible than installing end-of-pipe treatment, EPA assumed that a facility would alternatively pursue regulatoryoptions for relief from the WQBEL. When EPA assumed that facilities would pursue a regulatory alternative, no end-of-pipe treatment cost was estimated for a facility; however, a nominal cost for efforts to reduce the pollutant using best available control methodologies was included. Where regulatory alternatives were utilized, EPA did not take credit for any load reduction for any pollutant for which regulatory alternatives were assumed. Finally, EPA estimated and included the typical cost to facilities pursuing alternatives to CTR-based WQBELs. These costs may include activities such as additional monitoring, performing special studies, etc., to support facilities' requests for alternatives to CTR-based WQBEL.

EPA's revised per plant cost estimates are $61,000 to $325,000 per year for POTWs for the low and high cost scenarios in its Economic Analysis of the final CTR. These costs are based on analyzing a sample of facilities and extrapolating to the whole universe of POTWs. Because these values represent averages for the universe of facilities throughout the state, it is possible that costs may be higher for some facilities

and that others may have very low or zero costs.

Given Sausalito-Marin City Sanitary District's (SMCSD) effluent concentration of 22 ug/L and the proposed CTR limit provided in the comment of 15.3 ug/L, a 30.4% loading reduction would be required. Since SMCSD does not provide other details of its current operations, it is not possible for EPA to evaluate whether reverse osmosis is the only feasible option which would ensure compliance with the CTR-based limit. However where sample facilities commented that they would need to install reverse osmosis and provided data to that effect, EPA's analysis of that data found that reverse osmosis would not be necessary.

Comment ID: CTR-050-007b
Comment Author: Sonnenschein Nath & Rosenthal
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org: American Petrol
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? N
CROSS REFERENCES C-21
R
S

Comment: IV. EPA Has Not Complied With Applicable Regulatory Review Requirements. There are several significant statutes and executive orders that require EPA to undertake analyses of the costs and benefits of its regulations, and to submit the regulations and analyses to other governmental bodies, including the Office of Management and Budget (OMB) and Congress. Those authorities include the Regulatory Flexibility Act, the Small Business Regulatory Enforcement and Fairness Act (SBREFA), the Unfunded Mandates Reform Act, the Congressional Review Act, and Executive Order 12866 (Regulatory Planning and Review). EPA apparently believes that it does not need to comply with any of those requirements for this rulemaking. (62 Fed. Reg. at 42188-42191). API believes that EPA is required to meet those obligations for the proposed criteria, and that the Agency's rationale for avoiding this responsibility has no legal basis.

EPA supports its decision not to comply with the regulatory review statutes by stating that the proposed criteria "by themselves, do not directly impose economic impacts." (62 Fed. Reg. at 42188). EPA admits that when those criteria are combined with the designated uses that have been adopted by the State, and implemented in permit limits, "there may be a cost to some dischargers." (62 Fed. Reg. at 42188) could be substantial; the Agency itself estimates that the compliance cost could be between $15 and $87 million per year.(62 Fed. Reg. at 42189). (That does not include indirect costs to the economy, which would surely put this rule above the $100 million impact threshold specified in several of the regulatory review statutes listed above.) EPA cannot ignore those costs by creating its own interpretation of those statutes in which only "direct" impacts need be considered. There is no support in the statutory language or legislative history for such a reading, and EPA has cited no such support in its Federal Register notice.

There is another problem with EPA's rationale for avoiding regulatory review: if EPA were right that "indirect" impacts do not trigger those reviews, the impacts of this rulemaking are not really "indirect."

Those impacts emerge clearly once the proposed criteria are combined with the State's designated uses. Those designations have already been established, so there is nothing uncertain or indefinite about that aspect of the water quality standards. Then, once the standards are completed, the State must implement those standards through permit limits. While there are some decisions that the State must make in determining the proper permit limits, which can influence the size of the compliance costs, EPA can readily determine a range of possible costs. In fact, the Agency has already done so, resulting in the $15 - $87 million cost range discussed above. While those costs may not be fixed with certainty, they are certainly "direct economic impacts". Therefore, even if the Agency were correct in looking at only "direct" impacts, this rulemaking poses such impacts, and EPA must comply with the statutory requirements to conduct and submit cost and benefit analyses of its proposed criteria.

V. CONCLUSION

As explained above, EPA's proposal to issue water quality criteria for toxicities in the State of California suffers from serious legal flaws. API urges the Agency to reconsider its intended course of action in light of the issues raised in these and other public comments. If you have any questions regarding these comments, or would like any additional information, please call Theresa Pugh at 202/682-8036.

Response to: CTR-050-007b

See responses to CTR-050-007a, CTR-021-005c, and the preamble to the final rule.

Comment ID: CTR-052-021b
Comment Author: East Bay Dischargers Authority
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES C-21
R
S

Comment: C. RECOMMENDATIONS FOR MODIFICATIONS TO THE CTR AND EA

EPA should revise the proposed rule and economics analysis such that they are consistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider alternative criteria for San Francisco Bay Area waters, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. In failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act. Specific citations for these inconsistencies are contained in comments from BADA and CASA/Tri-TAC.

Response to: CTR-052-021b

See responses to CTR-009-008a and CTR-021-005c.

Comment ID: CTR-054-008c
Comment Author: Bay Area Dischargers Assoc.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES C-02b
C-24
R
S

Comment: Separate, scientifically defensible, reasonably achievable aquatic life criteria for copper should be adopted for San Francisco Bay, or alternatively EPA should specify in the Preamble implementation policies for copper that will result in reasonable control measures actions. To comply with the Clean Water Act and EPA regulations, EPA is required to consider specific water bodies. To fulfill the spirit of Presidential Executive Order 12866 and the requirements of the Unfunded Mandates Reform Act, EPA is required to evaluate regulatory alternatives based on an analysis of costs and benefits. Based on BADA's analysis of costs and benefits, EPA should either adopt copper criteria that are reasonably achievable or alternatively specify implementation policies that will avoid costly end-of-pipe controls. Potential implementation measures that could be specified include use of the following in calculating effluent limitations: actual dilution based on modeling studies; copper translators; probability of compliance less than 99.9%; and water-effect ratios determined for different segments of the Bay. Unless EPA specifies these or similar implementation policies in the rule, it is possible that the CTR could result in significant costs ($12 million per year to $78 million per year) while resulting in minor environmental benefit (a 1% reduction in copper loading to the Bay). In that case, the CTR would violate the Clean Water Act, EPA regulations, Presidential Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act. (see the discussion under Item 11 below.)

Response to: CTR-054-008c

See responses CTR-054-013a, CTR-021-005c, CTR-056-018, CTR-042-007a, and the preamble to the final rule.

Comment ID: CTR-054-049
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y
CROSS REFERENCES B Comment Period

Comment: 2. The California Toxics Rule is inconsistent with Executive Order 12866 and the Unfunded Mandates Reform Act.

a. Executive Order 12866

Executive Order (E.O.) No. 12866 was decreed by President Clinton on September 30, 1993. This Order governs review of agency regulations and sets standards, that federal agencies should use in planning, drafting, and reviewing regulations. E.O. 12866 requires agencies to:

- Assess all of the costs and benefits of available regulatory alternatives, including the alternative of not regulating;

- Propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs;

- Specify performance objectives, rather than specify the behavior or manner of compliance, to the extent feasible;

- Tailor its regulations to impose the least burden on society, taking into account, among other things, the cost of cumulative regulations;

- Afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days;

- Explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

EPA contends that the CTR is not a "significant regulatory action" requiring an economic analysis under the terms of E.O. 12866. This contention by EPA is erroneous since the standard for becoming a "significant-regulatory action" is that the proposed rule is likely to have annual effect on the economy of $100 million or more, OR adversely affect in a material way the economy, the environment, or local governments. Thus, EPA should not be able to allege that this is not a "significant regulatory action" because the CTR will be likely to adversely affect the economy and local governments even if the $100 million cut-off were not met.

Moreover, EPA failed to seriously explore available regulatory alternatives, including an option of not regulating; did not make a "reasoned determination that the benefits of the intended regulation justify its costs;" did not allow a 60-day comment periods, and did not seriously take into account the cost of cumulative regulations.

Response to: CTR-054-049

See response to CTR-021-005c.

Comment ID: CTR-055-003

Comment Author: USS-POSCO Industries
Document Type: Specific Industry
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References:
Attachments? Y
CROSS REFERENCES

Comment: UPI requests Office of Management and Budget (OMB) review of the subject reputation in accord with Executive Order (E.O.) 12866.

The EPA has not fully considered the impact and cost of Waste Load Allocation (WLA) for industrial facilities and for publicly owned treatment works (POTWs), even though the EPA supports the State Task Force conclusion which recognized that the development of Total Maximum Daily Load (TMDL) criteria was "significantly labor and data intensive" and that a "collaborative effort by....stockholders, could distribute work and associated costs". Costs were not properly determined for this significant effort or for the even larger compliance effort required for dischargers.

UPI has considered technologies and costs for compliance with the proposed regulation, recognizing that total maximum daily loads (TMDLs) would apply for a number of water quality-based effluent limitations (WQBELS) likely to be applicable to the receiving water at our facility.

UPI has determined that the only assured means of compliance with the proposed regulation is by use of equipment and operating methods that would eliminate discharge. Technologies for control are difficult, but appear to be feasible. The installed cost of such facilities at a plant such as ours which began operation early this century and contains numerous old installations was estimated at more that $25,000,000 when it was evaluated about five years ago. Such a cost for our facility when extended over just a few of the 56 major industrial facilities and 128 POTWs identified in California by the EPA would mandate OMB review of the subject regulation.

Response to: CTR-055-003

See response to CTR-021-005c. EPA disagrees with the commenter's statement that TMDLs would result in significant compliance costs. The use of TMDLs in developing permit limits would only reduce the cost impacts on facilities evaluated under the CTR because costs would not be borne solely by the point source dischargers. If EPA were to evaluate implementation costs using the TMDL process, it would allocate load reductions between point and nonpoint sources to take advantage of the most cost-effective mix of controls possible. EPA's current costing approach is conservative, erring towards higher costs by assuming that point sources would bear the cost burden alone. With a TMDL process, the result would be a more cost-effective mix between nonpoint and point source dischargers which could conceivably reduce the incremental impact on point source dischargers once current nonpoint source control programs are fully implemented.

Comment ID: CTR-059-002a
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority

State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-059 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES R
S

Comment: The Sanitation Districts disagree with EPA's assertions that the CTR is not a significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act, and that EPA is not required to comply with the Regulatory Flexibility Act because the CTR establishes no requirements applicable to small entities. We believe the potential costs for POTWs to comply with the CTR criteria would far exceed the $ 100 million threshold, based on the fact that we estimate that the potential costs for seven Sanitation Districts' facilities to comply with the CTR to be nearly $150 million per year. Clearly, many of the 304 other POTWs in the State will also incur costs, as, will other NPDES permittees, indirect dischargers, stormwater dischargers, and nonpoint sources. Thus, EPA's cost figure of $15 - $87 million per year is simply not a credible estimate. Also, it is quite clear that the CTR is likely to adversely affect local governments, including over 40 small communities located in our service area, and that it is significantly different from other federal regulations previously promulgated in California. We believe that EPA has not complied with the mandates of Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act. Accordingly, EPA must revise the economic analysis and it must be reviewed by the Office of Management and Budget and then EPA must select the most cost-effective and least burdensome regulatory alternative.

Response to: CTR-059-002a

EPA disagrees with LACSD's $150 million cost estimate, however EPA is not able to evaluate LACSD's estimate because LACSD does not provide monitoring data or any other details with which EPA can perform it's own analysis or evaluate LACSD's methodology. Based on EPA's analysis, costs to POTWs for the entire state range from $7.8 million to $41.6 million, much less than LACSD's $150 million cost estimate. See response to CTR-021-005c and the preamble for a discussion of how EPA's economic analysis meets the requirements of EO 12866, the UMRA, and the RFA.

Comment ID: CTR-059-004a
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-059 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES M

Comment: As others have commented, we also encourage EPA to build on its efforts over the past year to coordinate with the State Water Resource Control Board (SWRCB). In particular, we recommend that in the future the two agencies take such steps as the use of simultaneous comment periods, joint preparation

of the economic analysis, and joint final promulgation, much as the "CAL-FED" agencies are doing. Simultaneous comment periods would greatly facifitate review by the public. Development of a joint economic analysis would greatly reduce the time and resources expended by the two regulatory agencies, as well as by stakeholders. Most importantly, EPA and the SWRCB should adopt the CTR and the State's Implementation Policy at the same time. This will eliminate uncertainties for permit writers and the regulated community as to how the CTR should be implemented, and encourage greater statewide consistency in the implementation of the CTR.

Response to: CTR-059-004a

See responses to CTR-034-016.

Comment ID: CTR-059-006b
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-059 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES C-28
S

Comment: Due to the time constraints of the comment period, we have focused our review and comments primarily on those criteria that we anticipate may cause compliance issues for one or more of the Sanitation Districts' WRPs (see below). Based on our initial review of the proposed rule, the Sanitation Districts recommend that adoption of some of the criteria be deferred. As explained in the attached comments, we believe that there are significant scientific issues regarding the human health criteria for several trihalomethanes that call into question the accuracy and appropriateness of the proposed criteria. In addition, we reconunend that EPA defer adoption of those criteria that are below detection limits and that have not been demonstrated to be adversely affecting water quality or the attaimnent of designated uses on a water body-specific basis in California. In addition, we recommend that EPA not adopt criteria for effluent dependent waters, unless they have been adjusted to reflect the characteristics of this type of water body.

Criteria Below Detection Limits

We believe that there are fundamental problems with EPA's decision to adopt criteria that are below detection limits. This issue relates to EPA's statutory and regulatory obligations in establishing water quality criteria; namely, that EPA is subject to the same policies, procedures, analyses, and public participation requirements as States pursuant to 40 CFR section 131. These regulations require States to "review water quality data and information on discharges to specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use." (40 CFR section 131.11) For criteria where the method detection limit exceeds the objective, there are inadequate data to determine if the pollutant could reasonably be expected to interfere with attainment of designated uses. We believe

that because of the inability to detect these substances and the lack of monitoring information indicating water quality use impairment EPA has not been able to fulfill its obligations to conduct a water body-specific analysis of the need to promulgate criteria.(*1)

(*1)U.S. Environmental Protection Agency, Economic Analysis of the Proposed California Water Quality Toxics Rule, Office of Water (EPA-820-B-96-001, July 1997), p. 8-18.

Second, EPA has not fulfilled its obligations under the Unfunded Mandates Reform Act and Executive Order 12866 to analyze the costs and benefits of promulgating proposed criteria which cannot be detected or for which insufficient monitoring data are available.

Given these deficiencies, we recommend that EPA defer the adoption of criteria for constituents which are below detection limits until such time as EPA has demonstrated that the levels of toxic pollutants being discharged are at a level to warrant concern. As an alternative, EPA could defer to the State for promulgation of criteria for such compounds on a water body-specific basis as part of the State's continuous water quality planning process.

Response to: CTR-059-006b

See responses to CTR-021-005c and CTR-005-009.

Comment ID: CTR-059-015a
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES S

Comment: Executive, Order 12866 and Unfunded Mandates Reform Act

The Sanitation Districts disagree with EPA's assertion that the CTR is not a significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act. We believe that the potential costs for POTWs to comply with the CTR criteria could far exceed the $ 100 million threshold, based on the fact that we estimate that the potential costs of seven Sanitation Districts' facilities to comply with the CTR could be nearly $150 million per year. Clearly, many of the 304 other POTWs in the State will also incur costs, as will other NPDES permittees, indirect dischargers, stormwater dischargers, and nonpoint sources. Thus, EPA's cost figure of $15 - $87 million per year is simply not a credible estimate. Also, it is quite clear that the CTR is likely to adversely affect local governments, and that it is significantly different from other federal regulations previously promulgated in California. Therefore, we believe that EPA has not complied with the mandates of E.O. 12866 and the Unfunded Mandates Reform Act, and that the economic analysis must be revised, and EPA must select the most cost-effective and least burdensome regulatory alternative. In addition, the Office of Management and Budget should review the economic analysis and the rule before it is promulgated, as required by Section 6 of E.O. 12866.

Response to: CTR-059-015a

See responses to CTR-021-005c and CTR-059-002a.

Comment ID: CTR-090-012a
Comment Author: C&C of SF, Public Utl. Commis.
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES S

Comment: The PUC is aware that the Clean Water Act does not require and in fact does not allow for economic considerations in meeting water quality requirements. However, other policies and regulatory mandates (Executive Order 12866 and the Unfunded Mandates Reform Act) require that we disclose to the public the cost of meeting water quality requirements. There is no doubt that there will be costs that California must bear to produce water quality. We must assure the public that the costs will produce benefits. We are not confident that this proposed rule can do that.

Response to: CTR-090-012a

See response to CTR-021-005c.

Comment ID: CTR-092-016a
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES R
S

Comment: Introductory Comment

EPA states in the Executive Summary (page ES-2) to the Economic Analysis that:

"EPA did not calculate costs for any program for which it does not have enforceable authority ... (nor) for NPDES sources which are not typically subject to numeric WQBELs....."

From a national policy perspective, this narrowing, of the focus of the Economic Analysis may be a

justifiable approach to cost benefit analysis. Local government, however, is not able to disregard the potential cost effects of the CTR on urban and agricultural runoff. Those potential costs will have to be defrayed with proceeds from the same pool of local rate payers responsible for paying for point source pollutant removal programs. In California, those ratepayers have made clear both their support for environmental protection and their reluctance to pay more than is necessary for that protection. A narrow definition of those costs included in the CTR Economic Analysis continues the pattern of fragmenting responsibility and authority for the protection of waterways, which in turn hinders creation and implementation of holistic strategies which would best serve the environment at least cost.

Questions for EPA on the Introductory Comment

Q.-1) If not EPA, who has the responsibility to define the aggregated costs of all water quality-related regulations?

Q.-2) San Jose's reading of federal policy initiatives (which include, but are not limited to, the Regulatory Flexibility Act, Executive Order 12866, and the Unfunded Mandates Reform Act) indicates that EPA is empowered to analyze the economic impact of federal regulations in a way that addresses both aggregated cost impacts as well as the fiscal reality of local level government. Why was this not accounted for in the current analysis?

Response to: CTR-092-016a

See response to CTR-021-005c.

Comment ID: CTR-092-022a
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: E-01c Executive Order 12866
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES E-01b01
E-01y

Comment: Comment #6: General Cost Analysis Concerns

The City of San Jose has several generalized concerns about the costs utilized in the Economic Analysis, which raise questions regarding the validity of that analysis, as follows:

Q.6-1) We believe the real point of undertaking the CTR is to assure water quality throughout the State that protects beneficial uses. How can the existing Economic Analysis be sufficient if it does not address the cost of meeting the CTR standards from all sources of discharge? Especially given the amount and cost of aggressive intervention in reducing point source pollution undertaken in California to date?

Q.6-2) Throughout the text of the CTR and within the Economic Analysis, EPA refers repeatedly to the assumption that the State will provide regulatory relief to mitigate severe cost impacts engendered by the CTR. What happens to EPA's cost benefit analysis if even one of those assumptions of regulatory relief is not implemented by the State? While we support EPA's attempt to indicate available regulatory options for the State, local level governments and POTW's have little past experience on which to rationalize acceptance of such assumptions.

Q.6-3) EPA has not estimated the cost to local governments/POTW's/indirect dischargers of securing regulatory relief, nor has that cost been incorporated into the estimate of the CTR impact. How would EPA estimate the cost of securing regulatory relief and how would that additional cost affect the Economic Analysis? Especially since very costly studies may be required in order to qualify for regulatory relief.

Q.6-4) The preamble to the CTR discusses the linkage between the CTR and the National Toxics Rule, and EPA's intent to create a level playing field by setting the CTR standards within the National Toxics Rule Framework. There does not seem to have been a similar attempt to analytically level the playing field vis a vis implementation costs, however, as no indexing or calibration has been undertaken to account for the cumulative costs of efforts to date (see also Q. 4-3), cost equivalency data is rooted in experience outside California, and simple average costs are used to represent widely variable ranges. How would the CTR cost/benefit relationship be affected by adjusting for California's significant previous efforts on water quality control mechanisms and California cost data?

Response to: CTR-092-022a

See responses to CTR-032-004, CTR-060-019, CTR-004-003. amd CTR-035-048.

Because implementation is the responsibility of the state, EPA does not control, nor does it know, what the cost impacts of implementing the CTR will be.